

ASSEMBLY BILL

No. 600

Introduced by Assembly Member Dutra

February 22, 2001

An act to amend Sections 7019, 7030, 7085, 7090, 7091, and 7111 of, to add Sections 7019.1, 7026.15, and 7086 to, and to add Chapter 4 (commencing with Section 17800) to Part 3 of Division 7 of, the Business and Professions Code, to amend Sections 1351, 1354, 1355.5, 1356, 1357, 1364, 1365, 1365.7, 1368, 1368.4, 1375, and 1375.1 of the Civil Code, to amend Sections 1298 and 1298.7 of the Code of Civil Procedure, and to amend Section 120 of the Insurance Code, relating to new home warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 600, as introduced, Dutra. Home warranty program.

Existing law permits the registrar of contractors to investigate and discipline a contractor who has violated provisions of the Contractors' State License Law, which discipline can include requiring the contractor to correct construction defects that are the result of the contractor being found to have violated provisions of the Contractors' State License Law.

This bill would express the Legislature's findings and declarations relating to a lack of construction of affordable housing, and that there is a substantial need for a highly effective state-sanctioned 10-year new home warranty program to provide both a process for resolving claims and a mechanism to ensure quality design and construction.

This bill would establish the California Homebuyer Protection and Quality Construction Act of 2002. The bill would permit a licensed contractor to apply to the Contractors' State License Board to be

certified as a participating home builder, which would authorize the contractor to issue a California Home Construction Warranty, as defined. The bill would require the Contractors' State License Board to promulgate regulations and to review annually the certification.

The bill would require a California Home Construction Warranty to meet specified minimum standards and procedures. The bill would authorize a participating home builder to issue a California Home Construction Warranty on new residential housing, including a home that is part of a common interest development, where the purchaser secured title on or after January 1, 2002. The bill would provide that a California Home Construction Warranty applies for a minimum of 10 years and is binding on subsequent purchasers during the term of the warranty.

The bill would define "construction defects." The bill would define "correction of any construction defect" to include repair, replacement, or payment of reasonable cost to repair or replace, pursuant to existing construction codes and standards of construction practice in effect at the time of the original construction, or at the builder's option, subject to the dispute resolution provisions of the warranty, either rebuilding the structure in accordance with the original plans and specifications and certain modifications or paying the reasonable value of the property plus relocation costs.

The bill would permit a California Home Construction Warranty to provide for alternative dispute resolution for claims covered under the warranty. The bill would provide that if a homeowner elects by contract to purchase a home subject to a California Home Construction Warranty, the contractual provisions of that warranty shall be deemed to be the exclusive election of recourse by the homeowner and the participating homebuilder for the claims covered by the warranty. The bill would provide that the parties to a California Home Construction Warranty are deemed to have waived any tort remedies, including negligence, strict liability, implied warranties, or any other common law remedy other than for breach of warranty contract and the provisions therein. The bill would provide that the waiver does not preclude or limit any right of action for bodily injury, wrongful death, or fraud and intentional misrepresentation. The bill would also provide that to the extent that a California Home Construction Warranty does not contain coverage for alleged defects, there would be no election of recourse, and that the homeowner, if the warranty provides, waives any noncontractual claims against any design, professional, or trade



contractors covered by the warranty who performed professional services or works of improvement on the subject property.

The bill would require a participating home builder to have a program of quality assurance.

This bill would provide that a homeowner's rejection of a builder's reasonable offer during the dispute resolution process would limit recovery. The bill would further provide that limitations on damages would not apply if a builder fails to make a reasonable offer during the dispute resolution process or fails to complete repairs. The bill would also provide that if a builder does not take reasonable steps in a reasonable time to correct a defect creating an imminent threat to the inhabitants of a house the homeowner may correct the defect and recover from the builder.

Existing law provides specified procedures relating to binding arbitration provisions in any contract to convey real property. Existing law also provides in the event of an arbitration provision in a contract to convey real property, it shall not preclude or limit any right of action for bodily injury or wrongful death or for any right of action as specified or actions for damages relating to design specifications, surveying, planning supervision or observation of construction or construction improvement to real property, or latent deficiencies, in the construction or construction improvement of real property.

This bill would provide that the procedures regarding binding arbitration provisions in contracts to convey real property may apply to a dispute that arises under a California Home Construction Warranty that may apply to the real property in question. This bill would also provide instead that an arbitration provision shall not preclude or limit any right of action to actions for bodily injury or wrongful death.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7019 of the Business and Professions
- 2 Code is amended to read:
- 3 7019. (a) If funding is made available for that purpose, the
- 4 board may contract with licensed professionals, as appropriate, for
- 5 the site investigation of consumer complaints, *including*
- 6 *complaints arising under a California Home Construction*
- 7 *Warranty issued pursuant to the California Homebuyer Protection*



1 *and Quality Construction Act of 2002*. The registrar shall
2 determine the rate of reimbursement for licensed professionals
3 performing inspections on behalf of the board. All reports shall be
4 completed on a form prescribed by the registrar.

5 (b) As used in this section, “licensed professionals” means, but
6 is not limited to, engineers, architects, landscape architects, and
7 geologists licensed, certificated, or registered pursuant to this
8 division.

9 SEC. 2. Section 7019.1 is added to the Business and
10 Professions Code, to read:

11 7019.1. (a) The board shall furnish a copy of any opinion
12 prepared by the licensed professional, including any contractor,
13 retained pursuant to Section 7019, to the complainant, to the
14 licensee against whom the complaint has been made, and, upon
15 request, to the successors, receivers, trustees, executors,
16 administrators, assignees, or guarantors of either party, if directly
17 or collaterally interested under this chapter or otherwise as
18 provided by law, and to a warranty administrator under contract
19 with a participating homebuilder pursuant to Chapter 4
20 (commencing with Section 17800) of Part 3 of Division 7.

21 (b) The opinion specified in subdivision (a) shall include all of
22 the following:

23 (1) An identification of the nature of the condition that
24 produced the complaint and the cause or basis or contributing
25 cause of that condition.

26 (2) Whether the cause or basis of the condition complained of
27 constituted a departure from plans, codes, or accepted trade
28 standards.

29 (3) What the code provisions or trade standards specified in
30 paragraph (2) are.

31 (4) The cost to correct each item identified under paragraph (2)
32 as being the result of a departure from plans, specifications, codes,
33 or accepted trade standards.

34 (5) The cost to correct the damages specified in paragraph (4)
35 was established on the following basis:

36
37 ☐ Time and Materials

38 ☐ Unit Cost

39 ☐ Other (identify) _____

40 and was calculated from standards provided by

- ☐ Means Data Systems
- ☐ Dodge Data Systems
- ☐ National Construction Estimator
- ☐ Marshall–Swift
- ☐ Software Program (identify) _____
- ☐ Other (identify) _____

(c) The opinion shall also provide the name, identification, address, license number, and license classification or classifications of the professional who prepared the opinion, and a statement of any other qualifications that the professional asserts he or she relied upon as stated in the industry expert report submitted to the board. The license and other information required to be furnished under this subdivision may be provided on a form prescribed by the registrar.

The opinion shall also state the date or dates of any inspection of the site or other investigation and the date of the report. If the complaint arises under a California Home Construction Warranty issued pursuant to Chapter 4 (commencing with Section 17800) of Part 3 of Division 7, the report of the investigator shall provide the name and address of the warranty administrator under contract with a participating homebuilder and the actions taken by the warranty administrator or the participating homebuilder under the warranty to resolve the complaint with the complainant. The board shall endeavor to assure that all items in subdivision (b) that are subject to the pertinent cause of action are completed on the report.

(d) The board shall make the opinion available on, or promptly following, the earliest date upon which the opinion or the information from it is available for the purpose of mediation or the purpose of preparing a citation pursuant to Section 7099, or to any arbitrator or arbitration panel, or the date of service of any accusation pursuant to Section 11505 of the Government Code on any matter upon which the opinion relates, and to a warranty administrator under contract with a participating homebuilder pursuant to Chapter 4 (commencing with Section 17800) of Part 3 of Division 7.

(e) The board may impose a charge for furnishing a copy of an opinion pursuant to this section to any person except the complainant or the licensee against whom the complaint has been

1 made. The charge shall be reasonably related to the cost of
2 preparing and transmitting that copy and of processing the request.

3 (f) Nothing in this section shall be construed to supercede,
4 amend, or otherwise modify the terms and conditions, the
5 complaint and claims processing procedures, or the dispute
6 resolution procedures, agreed to by the parties to a California
7 Home Construction Warranty issued pursuant to the California
8 Homebuyer Protection and Quality Construction Act of 2002.
9 Upon receipt of the report referred to in this section, the board shall
10 defer action on the complaint until the complaint, claims, and
11 dispute resolution procedures provided for in the warranty have
12 been exhausted by the parties, unless the report includes a finding
13 that the participating homebuilder or warranty administrator under
14 contract with the homebuilder has not complied with the terms and
15 conditions of the warranty, nor the complaint, claims, and dispute
16 resolution procedures provided therein.

17 SEC. 3. Section 7026.15 is added to the Business and
18 Professions Code, to read:

19 7026.15. For purposes of this chapter, “contractor” does not
20 include a warranty administrator under contract with a
21 participating homebuilder to provide services under a California
22 Home Construction Warranty issued pursuant to Chapter 4
23 (commencing with Section 17800) of Part 3 of Division 7.

24 SEC. 4. Section 7030 of the Business and Professions Code
25 is amended to read:

26 7030. (a) Every person licensed pursuant to this chapter shall
27 include the following statement in at least 10-point type on all
28 written contracts, *including in California Home Construction*
29 *Warranties issued pursuant to Chapter 4 (commencing with*
30 *Section 17800) of Part 3 of Division 7*, with respect to which the
31 person is a prime contractor:

32 “Contractors are required by law to be licensed and regulated
33 by the Contractors’ State License Board which has jurisdiction to
34 investigate complaints against contractors if a complaint regarding
35 a patent act or omission is filed within four years of the date of the
36 alleged violation. A complaint regarding a latent act or omission
37 pertaining to structural defects must be filed within 10 years of the
38 date of the alleged violation. Any questions concerning a
39 contractor may be referred to the Registrar, Contractors’ State
40 License Board, P.O. Box 26000, Sacramento, California 95826.”

(b) At the time of making a bid or prior to entering into a contract to perform work on residential property with four or fewer units, whichever occurs first, a contractor shall provide the following notice in capital letters in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type:

“STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE LICENSED BY THE CONTRACTORS’ STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING—IF THE TOTAL PRICE OF THE JOB IS \$500 OR MORE (INCLUDING LABOR AND MATERIALS).

LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTORS’ STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES.

YOU MAY CONTACT THE CONTRACTORS’ STATE LICENSE BOARD TO FIND OUT IF THIS CONTRACTOR HAS A VALID LICENSE. THE BOARD HAS COMPLETE INFORMATION ON THE HISTORY OF LICENSED CONTRACTORS, INCLUDING ANY POSSIBLE SUSPENSIONS, REVOCATIONS, JUDGMENTS, AND CITATIONS. THE BOARD HAS OFFICES THROUGHOUT CALIFORNIA. PLEASE CHECK THE GOVERNMENT PAGES OF THE WHITE PAGES FOR THE OFFICE NEAREST YOU OR CALL 1-800-321-CSLB FOR MORE INFORMATION.”

(c) Failure to comply with the notice requirements set forth in subdivision (a) or (b) of this section is cause for disciplinary action.

SEC. 5. Section 7085 of the Business and Professions Code is amended to read:

7085. (a) After investigating any verified complaint alleging a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement as defined in Section 7151 and finding a possible violation, the registrar may, with the concurrence of both the licensee and the complainant, refer the alleged violation, and any dispute between the licensee and the complainant arising thereunder, to arbitration pursuant to this article, provided the registrar finds that:

(1) There is evidence that the complainant has suffered or is likely to suffer material damages as a result of a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement as defined in Section 7151.

(2) There are reasonable grounds for the registrar to believe that the public interest would be better served by arbitration than by disciplinary action.

(3) The licensee does not have a history of repeated or similar violations.

(4) The licensee was in good standing at the time of the alleged violation, and is in good standing at the time of referral to arbitration.

(5) The licensee does not have any outstanding disciplinary actions filed against him or her.

(6) The parties have not previously agreed to private arbitration of the dispute pursuant to contract, *in a California Home Construction Warranty issued pursuant to Chapter 4 (commencing with Section 17800) of Part 3 of Division 7*, or otherwise.

(7) The parties have been advised of the provisions of Section 2855 of the Civil Code.

For the purposes of paragraph (1), “material damages” means damages greater than five thousand dollars (\$5,000) and less than fifty thousand dollars (\$50,000).

(b) In all cases in which a possible violation of the sections set forth in paragraph (1) of subdivision (a) exists and the contract

1 price is equal to or less than five thousand dollars (\$5,000), or the
2 demand for damages is equal to or less than five thousand dollars
3 (\$5,000) regardless of the contract price, the complaint shall be
4 referred to arbitration, utilizing the criteria set forth in paragraphs
5 (2) to (6), inclusive, of subdivision (a).

6 SEC. 6. Section 7086 is added to the Business and Professions
7 Code, to read:

8 7086. Nothing in this article shall be construed to supersede,
9 amend, or otherwise modify the terms and conditions, and the
10 complaint, claims, and dispute resolution procedures agreed to by
11 parties to a California Home Construction Warranty.

12 SEC. 7. Section 7090 of the Business and Professions Code
13 is amended to read:

14 7090. The registrar may upon his or her own motion and shall
15 upon the verified complaint in writing of any person, investigate
16 the actions of any applicant, contractor, *participating homebuilder*
17 *certified to offer home construction warranties pursuant to*
18 *Chapter 4 (commencing with Section 17800) of Part 3 of Division*
19 *7, or home improvement salesperson within the state and may deny*
20 *the licensure certification or the renewal of licensure or*
21 *certification of, or cite, temporarily suspend, or permanently*
22 *revoke any license, certification, or registration if the applicant,*
23 *licensee, participating homebuilder certified to offer home*
24 *construction warranties pursuant to Chapter 4 (commencing with*
25 *Section 17800) of Part 3 of Division 7, or registrant, is guilty of or*
26 *commits any one or more of the acts or omissions constituting*
27 *causes for disciplinary action.*

28 The registrar may proceed to take disciplinary action as in this
29 article provided against an applicant or a person licensed or
30 registered under the provisions of this chapter, *or certified*
31 *pursuant to Section 17815*, even though the grounds or cause for
32 such disciplinary action arose upon projects or while the applicant,
33 licensee, or registrant was acting in a capacity or under
34 circumstances or facts which, under the provisions of Sections
35 7044, 7045, 7046, and 7048, would otherwise exempt the person
36 or his or her operations from the provisions of this chapter.

37 Notwithstanding any provision of this chapter, if the registrar
38 finds that any contractor licensed or registered under the
39 provisions of this chapter has willfully and deliberately violated
40 any state or local law relating to the issuance of building permits,

1 other than failure to obtain a county or city permit for repair,
2 maintenance, and adjustment of equipment where such repair,
3 maintenance, or adjustment is valued at less than five hundred
4 dollars (\$500) for labor or materials, or where the repair of a part
5 or component part of mechanical equipment consists of replacing
6 such part or component part of mechanical equipment in need of
7 repair with the identical part or component part, the registrar shall
8 take disciplinary action against the contractor's license in
9 accordance with this chapter.

10 For the purpose of this section, there shall be a rebuttable
11 presumption affecting the burden of proof that construction
12 performed without a permit is a willful and deliberate violation.

13 SEC. 8. Section 7091 of the Business and Professions Code
14 is amended to read:

15 7091. (a) A complaint against a licensee alleging
16 commission of any patent acts or omissions that may be grounds
17 for legal action shall be filed in writing with the registrar within
18 four years after the act or omission alleged as the ground for the
19 disciplinary action. An accusation or citation against a licensee
20 shall be filed within four years after the patent act or omission
21 alleged as the ground for disciplinary action or within 18 months
22 from the date of the filing of the complaint with the registrar,
23 whichever is later, except that with respect to an accusation
24 alleging a violation of Section 7112, the accusation may be filed
25 within two years after the discovery by the registrar or by the board
26 of the alleged facts constituting the fraud or misrepresentation
27 prohibited by the section.

28 (b) A complaint against a licensee alleging commission of any
29 latent acts or omissions that may be grounds for legal action
30 pursuant to subdivision (a) of Section 7109 regarding structural
31 defects, as defined by regulation, shall be filed in writing with the
32 registrar within 10 years after the act or omission alleged as the
33 ground for the disciplinary action. An accusation and citation
34 against a licensee shall be filed within 10 years after the latent act
35 or omission alleged as the ground for disciplinary action or within
36 18 months from the date of the filing of the complaint with the
37 registrar, whichever is later, except that with respect to an
38 accusation alleging a violation of Section 7112, the accusation
39 may be filed within two years after the discovery by the registrar
40 or by the board of the alleged facts constituting the fraud or



1 misrepresentation prohibited by Section 7112. As used in this
2 section “latent act or omission” means an act or omission that is
3 not apparent by reasonable inspection.

4 (c) An accusation regarding an alleged breach of an express,
5 written warranty for a period in excess of the time periods
6 specified in subdivisions (a) and (b) issued by the contractor shall
7 be filed within the duration of that warranty.

8 (d) The proceedings under this article shall be conducted in
9 accordance with the provisions of Chapter 5 (commencing with
10 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
11 Code, and the registrar shall have all the powers granted therein.

12 (e) Nothing in this section shall be construed to affect the
13 liability of a surety or the period of limitations prescribed by law
14 for the commencement of actions against a surety or cash deposit.

15 (f) The board shall adopt regulations to define the term
16 “structural defect” for purposes of this section by December 31,
17 1995.

18 (g) *Nothing in this section shall be construed to supersede,
19 amend, or otherwise modify the terms and conditions of a
20 California Home Construction Warranty issued pursuant to
21 Chapter 4 (commencing with Section 17800) of Part 3 or Division
22 7 or the complaint, claims, and dispute resolution procedures
23 provided for therein.*

24 SEC. 9. Section 7111 of the Business and Professions Code is
25 amended to read:

26 7111. (a) Failure to make and keep records showing all
27 contracts, documents, records, receipts, and disbursements by a
28 licensee of all of his or her transactions as a contractor, *including*
29 *records relating to home construction warranties issued by the*
30 *contractor*, and failure to have those records available for
31 inspection by the registrar or his or her duly authorized
32 representative for a period of not less than five years after
33 completion of any construction project or operation to which the
34 records refer, or refusal by a licensee to comply with a written
35 request of the registrar to make the records available for inspection
36 constitutes a cause for disciplinary action.

37 (b) Failure of a licensee, applicant, or registrant subject to the
38 provisions of this chapter, who without lawful excuse, delays,
39 obstructs, or refuses to comply with a written request of the
40 registrar or designee for information or records, to provide that

1 information or make available those records, when the
2 information or records are required in the attempt to discharge any
3 duty of the registrar, constitutes a cause for disciplinary action.

4 SEC. 10. Chapter 4 (commencing with Section 17800) is
5 added to Part 3 of Division 7 of the Business and Professions Code,
6 to read:

7
8 CHAPTER 4. CALIFORNIA HOMEBUYER PROTECTION AND
9 QUALITY CONSTRUCTION ACT OF 2002

10
11 Article 1. General Provisions

12
13 17800. This chapter shall be known and may be cited as the
14 California Homebuyer Protection and Quality Construction Act of
15 2002.

16 17801. (a) The Legislature finds and declares all of the
17 following:

18 (1) California has a statewide home building crisis.

19 (2) Nationally, most of the least affordable housing markets are
20 in California.

21 (3) The median price of homes in some California counties
22 exceeds three hundred thousand dollars (\$300,000).

23 (4) By 2003 only 20 percent of the households in Los Angeles
24 County will be able to afford a median priced home in that county.

25 (5) Multifamily housing, including condominiums and
26 townhouses, has traditionally been the entry level type of housing
27 designed for single people, young families, and senior citizens.

28 (6) Californians need affordable homes that incorporate high
29 quality construction, and they want to buy from homebuilders who
30 are able to stand behind their workmanship.

31 (b) The Legislature further finds and declares that there is a
32 substantial need for a highly effective state-sanctioned 10-year
33 new home warranty program to provide both a process for
34 resolving claims and a mechanism to ensure quality design and
35 construction.

36 17802. The purpose of this chapter is to do all of the
37 following:

38 (a) Promote the construction of high quality, affordable,
39 residential housing units by California homebuilders.



1 (b) Induce California homebuilders to improve the training of
2 homebuilding craftsmen to better assure the construction of high
3 quality, affordable, residential housing throughout California.

4 (c) Inspire consumer confidence by establishing state standards
5 for residential home warranties offered by homebuilders
6 throughout California that promise high quality workmanship free
7 from construction defects.

8 (d) Focus consumer awareness on home warranty terms by
9 requiring, prior to purchase, adequate disclosure of the rights and
10 obligations of both the builder and owners of homes warranted
11 under this chapter, including information about the claim
12 resolution process if a construction defect occurs.

13 (e) Ensure that participating homebuilders provide sufficient
14 financial resources to back their warranty, or obtain adequate
15 insurance from a licensed insurance company to guaranty that
16 home warranties will be honored.

17 (f) Encourage prompt and fair resolution of construction defect
18 claims by homeowners through the use of consumer friendly
19 claims processing procedures.

20 (g) Enhance consumer confidence in purchasing existing
21 homes, by enabling warranties to run with the title of the land
22 throughout the warranty, for a period of not less than 10 years.

23 (h) Protect subsequent purchasers of homes warranted
24 pursuant to this chapter, by requiring a seller to adequately disclose
25 the terms of home warranty coverage.

26 (i) Build consumer trust in the value of the home warranties
27 issued under this chapter by providing effective and consistent
28 state oversight of home warranty administration for the protection
29 of homeowners.

30 (j) Educate homeowners and potential buyers about home
31 warranties issued under this chapter by creating clear and concise
32 informational materials.

33 17803. This chapter applies to homebuyer warranties which
34 meet the requirements of this chapter, and which are offered by
35 participating homebuilders to purchasers of new residential
36 homes.

37 17804. Nothing in this act shall be construed to require a
38 licensed contractor to offer homebuyer warranties as a
39 requirement of his or her licensure.

1 17805. The requirements and standards set forth in this
2 chapter are applicable only to homebuyer warranties issued by
3 participating homebuilders pursuant to this chapter.

4 17806. As used in this chapter, the following definitions
5 apply:

6 (a) “Board” means the Contractors’ State License Board.

7 (b) “California Home Construction Warranty,” “home
8 construction warranty,” and “warranty,” unless otherwise
9 specified, mean a warranty offered by a participating homebuilder
10 pursuant to this chapter.

11 (c) “Construction defect” means a defect in design, materials,
12 or workmanship that meets all of the following:

13 (1) Results from an act or omission of the builder, or of an
14 architect, engineer, subcontractor, or some other agent, who is
15 responsible for design, specifications, surveying, planning,
16 supervision, or observation of construction or construction of the
17 residential improvements, and who is working for the builder as
18 an employee or pursuant to contract.

19 (2) Occurs during the original construction of the improvement
20 or in connection with the warranty repair work, and which, in the
21 case of a common interest development, includes construction or
22 repair work in all common areas.

23 (3) Renders the improvement or some part of it not reasonably
24 fit for its intended purpose.

25 (4) Materially affects one or more of the following:

26 (A) Building site work, including, but not limited to,
27 subsurface investigation, earthwork, protective drainage systems
28 for slopes, and landscape irrigation systems.

29 (B) Substructure, including, but not limited to, concrete slabs,
30 retaining walls, foundations, and basements, including
31 waterproofing and drainage.

32 (C) Building shell, including, but not limited to, floors and
33 floor coverings, walls and wall coverings, including stucco and
34 siding, windows, doors, roof and roof coverings, including eaves,
35 and building interior elements, including, but not limited to,
36 interior partitions, framing, interior doors, stairs and stair cases,
37 drywall and drywall finish, fire resistive assemblies and smoke
38 barriers, and sound control systems.

39 (D) Building services and exterior components, including, but
40 not limited to, chimneys and flues, decks and patios, plumbing

1 systems and plumbing fixtures, sanitary waste systems, rain water
2 gutters, downspouts and drain systems, heating ventilation and air
3 conditioning systems, electrical systems, fire protection and fire
4 suppression systems, telephone, television and computer wiring
5 systems and security systems installed by the builder.

6 (d) “Homeowner” means a “purchaser of a new residential
7 home,” “subsequent purchaser,” or other holder of title of a home
8 that is the subject of a home construction warranty issued pursuant
9 to this chapter.

10 (e) “Licensed insurance company” means an insurance
11 company authorized by the California Department of Insurance to
12 transact miscellaneous insurance, as defined in Section 120 of the
13 California Insurance Code with a rating of at least “AA” or the
14 equivalent from a standard rating agency recognized by the
15 Contractors’ State License Board, or a nonadmitted insurer
16 declared eligible for placement and included on the export list
17 established and maintained by the Insurance Commissioner
18 pursuant to Section 1763.1 of the Insurance Code with a rating of
19 at least “AA” or the equivalent from a standard rating agency
20 recognized by the Contractors’ State License Board.

21 (f) “Participating homebuilder” means a contractor,
22 partnership, corporation, limited liability company, or other entity
23 who has been certified by the Contractors’ State License Board
24 pursuant to Section 17815 to issue California Home Construction
25 Warranties.

26 (g) “Purchaser of a new residential home” means the holder of
27 the original title to a newly constructed residential home, including
28 a home that is part of a common interest development, where the
29 purchaser secured title on or after January 1, 2002.

30 (h) “Subsequent purchaser” means a subsequent holder of title
31 to a residential home that is subject to a home construction
32 warranty issued pursuant to this chapter.

33 (i) “Warranty administrator” means a licensed insurance
34 company or a qualified third party claims administrator that has
35 contracted with a participating homebuilder to administer and
36 process complaints and claims under a home construction
37 warranty, or an employee of the participating homebuilder whose
38 responsibilities include the administration and processing of
39 complaints and claims under the warranty.

40



1 Article 2. Warranty Administration and Qualification

2
3 17810. The board shall administer and enforce this chapter as
4 it applies to licensed contractors who apply to be certified as
5 participating homebuilders under this chapter and who offer home
6 construction warranties pursuant to this chapter.

7 17811. The board shall establish and administer a certification
8 process for licensed contractors who make application to be
9 certified as participating homebuilders pursuant to this chapter.

10 17812. The board shall promulgate regulations establishing
11 the amount and nature of financial security to be required under
12 this chapter.

13 17815. For a licensed contractor to be a participating
14 homebuilder, the contractor has to be certified by the board to issue
15 a California Home Construction Warranty. To be certified, the
16 contractor shall meet all of the following requirements and provide
17 proof of compliance therewith on a form prescribed by the board:

18 (a) Hold and maintain a valid license as a general building
19 contractor, issued by the board.

20 (b) Provide proof of an insurance policy providing coverage
21 for the warranty obligations assumed by the contractor, issued by
22 a licensed insurance company.

23 (c) Develop and implement a quality assurance program that
24 meets the requirements of Section 17840.

25 (d) File a sample copy of the home construction warranty that
26 the contractor intends on offering. The home construction
27 warranty shall meet the requirements of Article 3 (commencing
28 with Section 17825).

29 (e) Demonstrate proof of administrative capacity to administer
30 and process complaints and claims during the effective dates of all
31 warranties issued pursuant to this chapter.

32 (1) A contractor may contract with a warranty administrator or
33 licensed insurance company to administer and process complaints
34 and claims under warranties issued pursuant to this chapter.

35 (2) Complaint and claims-handling procedures adopted by the
36 warranty administrator, licensed insurance company, or qualified
37 employee of the contractor shall meet the requirements of Article
38 3 (commencing with Section 17825).

39 (f) Provide a summary of the alternative dispute resolution
40 process to be used under the warranty.

1 17816. Proof of compliance with all of the requirements of
2 this section shall be filed with the board before a contractor may
3 be certified to offer and issue warranties under this chapter. A
4 contractor is deemed to have met the requirements of this chapter
5 if the board has not certified or refused certification of the
6 contractor's application within 30 days of the date all required
7 documents have been filed with the board.

8 17817. A contractor, upon being issued a certificate to issue
9 California Home Construction Warranties by the board pursuant
10 to this section, shall file annually with the board, on a form
11 prescribed by the board, information indicating any modifications
12 to the contractor's original application for certification as
13 approved by the board. The board shall renew the contractor's
14 certification unless it finds, upon review of the contractor's annual
15 renewal filing, that the contractor no longer meets the
16 requirements of this section. Upon a finding by the board that the
17 contractor no longer meets the requirements of this section, the
18 contractor shall have 30 days within which to provide proof that
19 all of the requirements of this section have been met. If the
20 contractor is not able to provide the required proof to the board, the
21 board shall suspend or revoke the contractor's certification to issue
22 California Home Construction Warranties until the contractor
23 provides proof of meeting the requirements of this section. Any
24 action taken by the board to suspend or revoke the certification of
25 a contractor to issue California Home Construction Warranties
26 under this section shall not affect the obligations of the contractor
27 under home construction warranties issued by the contractor, as a
28 participating homebuilder prior to the date of the suspension or
29 revocation.

30 17820. The following fair marketing standards apply to
31 participating homebuilders who offer home construction
32 warranties pursuant to this chapter:

33 (a) Only a warranty that meets the minimum standards of
34 Article 3 (commencing with Section 17825) may be advertised
35 and marketed as a California Home Construction Warranty.

36 (1) A warranty offered in connection with the sale of residential
37 housing that does not meet the requirements of this chapter and
38 purports to warrant the construction of the house shall not be
39 represented as meeting the requirements of this chapter to
40 prospective homebuyers, nor shall the warranty, the warranty

1 administrator, a licensed contractor or other person misrepresent
2 or falsely advertise the warranty as meeting the requirements of the
3 California Homebuyer Protection and Quality Construction Act of
4 2002.

5 (2) Nothing in this section shall be construed to prohibit a home
6 protection company, licensed pursuant to Chapter 1 (commencing
7 with Section 12740) of Part 7 of Division 2 of the California
8 Insurance Code, from offering a home protection contract in
9 connection with the sale of residential housing, as long as the home
10 protection contract clearly discloses that the contract is not being
11 offered pursuant to the California Homebuyer Protection and
12 Quality Construction Act of 2002.

13 (b) A participating homebuilder shall disclose to purchasers of
14 new residential homes, at the time of acceptance of the real estate
15 purchase contract, that a California Home Construction Warranty
16 applies to the property.

17 (1) The participating homebuilder shall reference the existence
18 of a California Home Construction Warranty in the deed of sale for
19 the property at issue, at the time of the filing and registration of the
20 deed with the county.

21 (2) A copy of the warranty shall be provided to the purchaser
22 at the time of acceptance of the real estate purchase contract.

23 (3) The warranty shall clearly state the effective date that
24 coverage begins and ceases under the warranty. The warranty shall
25 be in effect a minimum of 10 years, and shall begin on the date of
26 substantial completion of the residential home to which it applies.

27 (4) If a home construction warranty provides for alternative
28 dispute resolution to resolve disputes under the warranty, this shall
29 be clearly disclosed to the purchaser no later than at the time of
30 acceptance of the real estate purchase contract.

31 (5) During the term of the warranty, if the purchaser of a new
32 home subject to a California Home Construction Warranty
33 transfers title to the property to a subsequent purchaser, the
34 original purchaser of the home shall provide the disclosure
35 required by this section to the subsequent purchaser at the time of
36 acceptance of the real estate purchase contract.

37 (6) For new residential homes to which this chapter applies that
38 are included within a subdivision subject to the California
39 Subdivided Lands Act, and for which a public report is required
40 to be filed pursuant to that act, the developer of the subdivision



1 shall include a statement in the public report indicating whether or
2 not the new residential homes within the division are subject to a
3 home construction warranty issued pursuant to this chapter.

4 (c) A participating homebuilder, a warranty administrator, or a
5 sales, marketing, or other representative of the homebuilder shall
6 not knowingly misrepresent the terms and conditions of a warranty
7 offered pursuant to this chapter.

8
9 Article 3. California Home Construction Warranty

10
11 17825. A California Home Construction Warranty issued,
12 sold, or offered for sale by a participating homebuilder pursuant
13 to this chapter shall be written in clear, understandable language
14 and the entire contract shall be printed or typed in easy to read
15 10-point or larger type.

16 17826. A California Home Construction Warranty issued,
17 sold, or offered for sale by a participating homebuilder pursuant
18 to this chapter shall include the following:

19 (a) The coverage provided under the warranty and any
20 exclusions or restrictions to that coverage.

21 (b) The rights and obligations of the participating homebuilder
22 and the homeowner under the warranty.

23 (c) The process for filing of a complaint or a claim under the
24 warranty, including an emergency complaint, and any filing fees
25 or deductibles that may apply thereto.

26 (d) The name, address, and telephone number of the warranty
27 administrator, and the emergency telephone number for
28 emergency complaint.

29 (e) If the participating homebuilder has contracted with a
30 licensed insurance company or licensed surety insurance company
31 to provide insurance coverage for the warranty obligations
32 assumed by the homebuilder, the home warranty shall provide the
33 name, address, and telephone number of the licensed insurance
34 company and shall conspicuously state that upon failure of the
35 participating homebuilder to perform under the contract, the
36 homeowner is entitled to make a claim directly against the
37 insurance company and the process for making that claim.

38 (f) If the participating homebuilder has not contracted with a
39 licensed insurance company or licensed surety insurance company
40 to provide insurance coverage for the warranty obligations

1 assumed by the homebuilder, the home buyer warranty shall
2 conspicuously state that upon the failure of the homebuilder to
3 perform under the contract, the homeowner is entitled to make a
4 claim directly against the guarantors of the homebuilder's
5 warranty obligations and the process for making the claim.

6 (g) The circumstances under which the homeowner is required
7 to obtain prior approval from the participating homebuilder to
8 correct a covered defect, the procedure for obtaining prior
9 approval to correct a covered defect, and the process for making
10 an emergency complaint.

11 (h) The terms, restrictions, and conditions covering the
12 transferability of the California Home Construction Warranty, and
13 a conspicuous statement indicating that the warranty
14 automatically transfers with title to subsequent purchasers during
15 the term of the warranty and the homeowner may be required to
16 disclose the existence of the warranty to subsequent purchasers.

17 (i) A conspicuous statement that, subject to the terms and
18 conditions of the warranty, the warranty may not be cancelled or
19 otherwise terminated by either the homeowner or the participating
20 homebuilder.

21 (j) A conspicuous statement indicating the circumstances
22 under which the warranty may be voided by either party.

23 (k) The process for the complaint and inquiry process and for
24 the claim process for mediation or resolution of complaints,
25 claims, controversies, and disputes arising under the warranty. The
26 warranty may not establish a complaint and inquiry process that
27 delays the written notice required by subdivision (c) of Section
28 17830 more than 30 days from the date the participating
29 homebuilder receives an initial notice of complaint or inquiry.
30 This paragraph does not prohibit an extension of time pursuant to
31 subdivision (c) of Section 17830.

32 (l) If the home construction warranty provides for alternative
33 dispute resolution, this must be conspicuously stated in the
34 warranty agreement.

35 (m) If the home construction warranty provides for alternative
36 dispute resolution of any and all complaints, claims, disputes, and
37 controversies arising from the construction of the residential home
38 of the homeowner, including any complaints, claims, disputes, and
39 controversies being made directly against a licensed insurance
40 company that has contracted with the participating homebuilder to



1 cover the homebuilder's warranty obligations, this shall be
2 conspicuously stated in the warranty agreement.

3 17827. (a) The home construction warranty coverage
4 language shall conspicuously state that the warranty provides
5 coverage for construction defects as defined in this chapter, for a
6 minimum period of 10 years from the date of substantial
7 completion of the construction of the residential home to which the
8 warranty applies, and that during the minimum 10-year coverage
9 period of the warranty, upon proper notice from the homeowner,
10 the participating homebuilder shall be responsible for the
11 correction of any construction defect covered by the warranty.

12 (b) For purposes of this section, the phrase "correction of any
13 construction defect" shall include repair, replacement, or payment
14 of reasonable costs to repair or replace, pursuant to existing
15 construction codes and standards of construction practice in effect
16 at the time of original construction, or at the builder's option,
17 either of the following:

18 (1) Rebuild the structure in accordance with the original plans
19 and specifications and in accordance with any modifications
20 required as a condition of obtaining a building permit.

21 (2) Pay the reasonable market value of the property established
22 without a reduction for existing construction defects, plus
23 relocation costs.

24 (c) The choice between repair, replacement, or payment is the
25 builder's, subject to the dispute resolution provisions of the
26 warranty.

27 (d) The builder shall be responsible for all physical damages
28 proximately caused by construction defects covered under the
29 warranty and for the actual reasonable cost of alternative shelter
30 expenses during the period of repairs.

31 17828. (a) During the term of a home construction warranty,
32 the warranty shall be transferred to subsequent purchasers of the
33 home, at the time legal title to the home is transferred. The transfer
34 of the warranty shall neither extend nor reduce the original
35 termination date of the warranty.

36 (b) The participating homebuilder may not change the terms
37 and conditions of the home construction warranty during the term
38 of the warranty.

39 (c) Subject to terms and conditions of the warranty, a California
40 Home Construction Warranty, upon becoming effective, may not

1 be canceled by either the homeowner or the participating
2 homebuilder during the term of the warranty.

3 17829. Nothing in this chapter shall be construed to
4 discourage or prohibit participating homebuilders from offering
5 home construction warranties that provide coverage for
6 construction defects for a period of longer than 10 years or that
7 provide for differing coverage periods for different components of
8 the home, provided that the coverage provided meets the minimum
9 requirements of this section.

10 17830. The following fair complaint and claims-handling
11 standards shall apply to participating homebuilders, warranty
12 administrators, and licensed insurance companies under contract
13 with participating homebuilders to administer and process
14 complaints and claims arising from warranties issued pursuant to
15 this chapter:

16 (a) A homebuilder may contract with a warranty administrator
17 or licensed insurance company to administer and process
18 complaints and claims under home construction warranties issued
19 pursuant to this chapter.

20 (1) If a participating homebuilder contracts with a warranty
21 administrator or licensed insurance company to administer and
22 process complaints and claims under a home construction
23 warranty, the warranty shall conspicuously state the identity,
24 address, and telephone number of the warranty administrator or
25 insurance company for purposes of the noticing of complaints,
26 construction defects, or other construction deficiencies arising
27 from construction of a new residential home that is subject to the
28 warranty.

29 (2) If the participating homebuilder replaces a warranty
30 administrator who has been processing complaints and claims
31 under a warranty subject to this chapter, the participating
32 homebuilder shall immediately notify the homeowner of the
33 identity, address, and telephone number of the new warranty
34 administrator for the noticing of complaints and claims, the
35 participating homebuilder shall notify the Contractors' State
36 License Board within 30 days of the identity of the new warranty
37 administrator.

38 (b) The participating homebuilder shall establish and maintain,
39 or contract with a warranty administrator or licensed insurance
40 company to establish and maintain, a process for responding to



1 complaints and inquiries arising under the California Home
2 Construction Warranty.

3 (1) A participating homebuilder or warranty administrator, or
4 licensed insurance company under contract with the homebuilder
5 to administer and process complaints and claims, shall
6 acknowledge receipt of an initial nonemergency complaint or
7 inquiry within 15 days of receipt.

8 (2) Where necessary for resolution of the complaint or inquiry,
9 the participating homebuilder and homeowner shall schedule a
10 mutually agreeable time for the inspection of the conditions giving
11 rise to the complaint or inquiry.

12 (3) Upon completion of the inspection of the condition giving
13 rise to the complaint or inquiry, and no later than 30 days from
14 receipt of the complaint or inquiry, or 45 days if the complaint or
15 inquiry is from a homeowners' association, unless an extension of
16 this time period is agreed to by the parties, the participating
17 homebuilder shall provide the homeowner with a written
18 statement indicating whether or not the condition giving rise to the
19 complaint or inquiry is covered under the warranty and any
20 corrective action the homebuilder intends to take regarding the
21 condition giving rise to the complaint or inquiry.

22 (4) If the participating homebuilder determines that the
23 condition giving rise to the complaint or inquiry is not covered
24 under the warranty, the written statement required by this
25 subdivision shall include a description of the process for filing a
26 claim under the warranty.

27 (5) If the participating homebuilder determines that the
28 condition giving rise to the complaint or inquiry is covered under
29 the warranty, the written statement required by this subdivision
30 shall indicate the specific action the builder will take to correct the
31 condition and the schedule for taking that corrective action.

32 (6) The homeowner shall comply with the complaint and
33 inquiry procedures provided in the warranty including the
34 inspection provided for in paragraph (2) of subdivision (b) of
35 Section 17830, before initiating the claim process under the
36 warranty. A participating homebuilder and homeowner may
37 mutually agree to extend the complaint and inquiry process
38 beyond the time in the warranty.

39 (c) At any time in the complaint and inquiry process, or during
40 the claim process under the warranty, the participating

1 homebuilder and homeowner may mutually agree to directly
2 invoke the dispute resolution procedures set forth in the warranty.
3 If the dispute resolution procedures are directly invoked, the
4 parties may mutually agree to either shorten or extend the
5 timelines for complaints and claims as set forth in this subdivision,
6 and all of the following shall apply:

7 (1) Upon receipt of a written notice of claim from the
8 homeowner under the warranty, the participating homebuilder
9 shall acknowledge receipt of the notice within 15 days and make
10 a good faith effort to meet with the homeowner and inspect the
11 basis for the claim.

12 (2) Upon inspection of the claim, and within 30 days of the
13 initial notice of claim, the participating homebuilder shall provide
14 the homeowner with a written statement indicating whether or not
15 the claim is covered under the warranty and any corrective action
16 the homebuilder intends to take regarding the covered defect.

17 (3) If the participating homebuilder determines that the claim
18 is not covered under the warranty, the written statement required
19 by this subdivision shall include a statement indicating that the
20 claim is not covered and shall include a description of the process
21 for resolution of disputes under the warranty.

22 (4) If the participating homebuilder determines that the claim
23 is covered under the warranty, the written statement required by
24 this subdivision shall indicate the specific action the builder will
25 take to correct the defect and the schedule for taking that corrective
26 action.

27 (d) If the California Home Construction Warranty provides for
28 alternative dispute resolution to resolve disputes under the
29 warranty, the process and procedures for alternative dispute
30 resolution shall comply with the requirements of Section 17835.

31 17835. (a) A California Home Construction Warranty may
32 include a provision to submit all complaints, claims, disputes, and
33 controversies relating to construction defects, construction
34 deficiencies, or any and all issues arising from the construction of
35 the new residential home, regardless of the nature of the claim, the
36 injury or damage sustained or the type of remedy sought, to a
37 dispute resolution conference with subsequent referral to judicial
38 arbitration pursuant to Section 1141.12 of the Code of Civil
39 Procedure as a means of alternative dispute resolution.



1 (b) A home construction warranty may include a provision to
2 submit any and all disputes or controversies regarding scope of
3 coverage under the warranty or breach of the warranty to a dispute
4 resolution conference with subsequent referral to judicial
5 arbitration pursuant to Section 1141.12 of the Code of Civil
6 Procedure.

7 (c) A home construction warranty may include a provision to
8 submit any and all disputes or controversies directly against a
9 warranty administrator or licensed insurance company under
10 contract with a participating homebuilder to a dispute resolution
11 conference with subsequent referral to judicial arbitration
12 pursuant to Section 1141.12 of the Code of Civil Procedure.

13 (1) A home construction warranty which includes a provision
14 for a dispute resolution conference with subsequent referral to
15 judicial arbitration pursuant to Section 1141.12 of the Code of
16 Civil Procedure shall conspicuously state the following
17 procedures for conducting the dispute resolution conference:

18 (A) The process and time periods for delivery of written notice
19 from one party to the agreement to the other, for initiating the
20 dispute resolution conference, and for specifying the nature of the
21 dispute, the amount involved, and the remedy sought.

22 (B) The process for responding to a written notice initiating a
23 dispute resolution conference.

24 (C) If the agreement provides for an expedited dispute
25 resolution process for certain claims based upon the amount in
26 controversy, the type of claim in dispute, or any other criteria, and
27 the rules and process for that expedited dispute resolution process.

28 (D) The process and time periods for any dispute resolution
29 conferences and requests for information.

30 (E) The process for appointment of a neutral and impartial
31 facilitator. The facilitator shall be appointed within a specified
32 period of time, which may not be more than 60 days from the
33 warranty administrator's receipt of a written request from a party
34 to resolve the claim or dispute.

35 (F) The venue of the dispute resolution proceedings which
36 shall be the county where the home is located unless the parties
37 agree in writing to some other location.

38 (G) The responsibility of the parties for the fees and expenses
39 of the dispute resolution proceedings, provided that the
40 homebuilder shall be responsible for and shall reimburse the

1 homeowner for the cost of the initial dispute resolution
2 conference.

3 (2) A home construction warranty subject to this subdivision
4 shall also conspicuously state that the process for conducting
5 judicial arbitration is as contained in Chapter 2.5 (commencing
6 with Section 1141.10) of Title 3 of Part 3 of the Code of Civil
7 Procedure.

8 (e) The parties to the home construction warranty shall have the
9 right to be represented by an attorney at any proceeding, hearing,
10 or other meeting between the parties to discuss any dispute arising
11 under the warranty.

12 (f) Any agreement to resolve disputes arising under a
13 California Home Construction Warranty, and the provision setting
14 forth the rules and procedures to be used in the dispute resolution
15 process, as required by this section, shall be filed with the board
16 by the participating homebuilder.

17 (g) If during the process authorized by this section, a
18 homeowner or homeowners' association unreasonably rejects an
19 offer made by the builder, the homeowner, or homeowners'
20 association may not recover an amount in excess of the reasonable
21 cost of the repairs that are necessary to correct the construction
22 defect and that are covered under the warranty and may recover
23 only the amount of reasonable and necessary attorney's fees and
24 costs incurred before the offer was rejected.

25 (h) If a participating builder fails to make a reasonable offer
26 during the process authorized by this section, or fails to complete,
27 in a good and workmanlike manner, the repairs specified in an
28 accepted offer made pursuant to that process, the limitations on
29 damages and remedies provided for in this chapter shall not apply.

30 (i) The arbitrator to which the dispute is referred after a dispute
31 resolution conference shall determine the reasonableness of a
32 rejection of an offer of settlement made under this section and the
33 reasonableness of an offer made under this section.

34 (j) Notwithstanding any other provision of this chapter, a
35 participating builder who receives written notice of a construction
36 defect covered by the warranty and creating an imminent threat to
37 the health or safety of the inhabitants of the house shall take
38 reasonable steps to correct the defect as soon as practicable. If the
39 participating builder fails to correct the defect in a reasonable time,
40 the homeowner or homeowners' association may have the defect



1 corrected and may recover from the participating builder the
2 reasonable cost of repairs, plus attorney's fees and costs in addition
3 to any other damages recoverable under any law not inconsistent
4 with the provisions of this chapter.

5 (k) Except as provided in subdivision (i), a dispute resolution
6 conference initiated pursuant to this chapter shall be conducted in
7 accordance with Chapter 2 (commencing with Section 1115) of
8 Division 9 of the Evidence Code.

9 17840. A participating homebuilder who offers a California
10 Home Construction Warranty pursuant to this chapter shall
11 develop and maintain a quality assurance program which has the
12 purpose that the homes built meet high quality standards, and shall
13 include all of the following:

14 (a) A process for the inspection of workmanship at appropriate
15 stages of the construction process, with a management and
16 oversight process that seeks to eliminate the occurrence of
17 construction defects in all of the following areas:

18 (1) Structural.

19 (2) Exterior.

20 (3) Interior.

21 (4) Site preparation.

22 (5) Foundations.

23 (6) Installation of doors and windows.

24 (7) Roofing.

25 (8) Plumbing.

26 (9) Electrical.

27 (10) Heating, air-conditioning, insulation, and ventilation
28 systems.

29 (b) A program for the hiring, training, and continuing
30 education for employees of the participating homebuilder who
31 participate in the actual construction or inspection of residential
32 housing.

33 (c) A program for contracting with independent contractors
34 and subcontractors who participate in the actual construction or
35 inspection of residential housing:

36 (1) The participating homebuilder shall enter into written
37 contracts with all independent contractors and subcontractors for
38 the completion of the work being contracted for.

39 (2) The participating homebuilder shall contact the
40 Contractors' State License Board regarding the licensure and

1 bonding of all independent contractors and subcontractors who
2 work on the construction site and are under contract.

3 (3) The participating homebuilder may include performance
4 incentives and targets for quality construction in contracts with
5 independent contractors and subcontractors.

6 (4) The participating homebuilder shall disclose in its
7 certification filing made pursuant to Section 17815 any training or
8 continuing education programs applicable to independent
9 contractors and subcontractors.

10 (d) A participating homebuilder may contract with a warranty
11 administrator, licensed insurance company, or third-party
12 inspection service to meet the requirements of this section.

13 17841. When a California Home Construction Warranty
14 covers a common interest development, a participating home
15 builder shall provide to the homeowners' association an approved
16 set of original plans and specifications, as-built drawings, working
17 drawings, and change orders.

18 17845. If a homeowner elects by contract to purchase a home
19 subject to a warranty that meets the minimum standards for
20 California Home Construction Warranties, the contractual
21 provisions of that warranty shall be deemed to be the exclusive
22 election of recourse by that homeowner and the participating
23 homebuilder for the claims covered by the warranty. The parties
24 to the warranty contract are deemed to have waived any tort
25 remedies, including negligence, strict liability, implied warranties,
26 or any other common law remedy other than for breach of
27 warranty contract and the provisions therein. To the extent that a
28 home construction warranty does not contain coverage for certain
29 alleged defects, there is no election of recourse. The homeowner
30 who is party to the warranty contract, should the warranty so
31 provide, waives any noncontractual claims against any design,
32 professional, or trade contractors covered by the warranty who
33 performed professional services or works of improvement on the
34 subject property. This section does not preclude or limit any right
35 of action for bodily injury, wrongful death, or fraud and intentional
36 misrepresentation.

37 SEC. 11. Section 1351 of the Civil Code is amended to read:

38 1351. As used in this title, the following terms have the
39 following meanings:



(a) “Association” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

(b) “*California Home Construction Warranty*” means a warranty issued by a participating homebuilder pursuant to Chapter 4 (commencing with Section 17800) of Part 3 of Division 7 of the *Business and Professions Code*.

(c) “Common area” means the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing. However, the common area for a planned development specified in paragraph (2) of subdivision (k) may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

~~(e)~~

(d) “Common interest development” means any of the following:

(1) A community apartment project.

(2) A condominium project.

(3) A planned development.

(4) A stock cooperative.

~~(d)~~

(e) “Community apartment project” means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.

~~(e)~~

(f) “Condominium plan” means a plan consisting of (1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan pursuant to this title signed and acknowledged by the following:

(i) The record owner of fee title to that property included in the condominium project.

(ii) In the case of a condominium project which will terminate upon the termination of an estate for years, the certificate shall be

1 signed and acknowledged by all lessors and lessees of the estate for
2 years.

3 (iii) In the case of a condominium project subject to a life
4 estate, the certificate shall be signed and acknowledged by all life
5 tenants and remainder interests.

6 (iv) The certificate shall also be signed and acknowledged by
7 either the trustee or the beneficiary of each recorded deed of trust,
8 and the mortgagee of each recorded mortgage encumbering the
9 property.

10 Owners of mineral rights, easements, rights-of-way, and other
11 nonpossessory interests do not need to sign the condominium plan.
12 Further, in the event a conversion to condominiums of a
13 community apartment project or stock cooperative has been
14 approved by the required number of owners, trustees,
15 beneficiaries, and mortgagees pursuant to Section 66452.10 of the
16 Government Code, the certificate need only be signed by those
17 owners, trustees, beneficiaries, and mortgagees approving the
18 conversion.

19 A condominium plan may be amended or revoked by a
20 subsequently acknowledged recorded instrument executed by all
21 the persons whose signatures would be required *to record a*
22 *condominium plan* pursuant to this subdivision.

23 ~~(f)~~

24 (g) A “condominium project” means a development
25 consisting of condominiums. A condominium consists of an
26 undivided interest in common in a portion of real property coupled
27 with a separate interest in space called a unit, the boundaries of
28 which are described on a recorded final map, parcel map, or
29 condominium plan in sufficient detail to locate all boundaries
30 thereof. The area within these boundaries may be filled with air,
31 earth, or water, or any combination thereof, and need not be
32 physically attached to land except by easements for access and, if
33 necessary, support. The description of the unit may refer to (1)
34 boundaries described in the recorded final map, parcel map, or
35 condominium plan, (2) physical boundaries, either in existence, or
36 to be constructed, such as walls, floors, and ceilings of a structure
37 or any portion thereof, (3) an entire structure containing one or
38 more units, or (4) any combination thereof. The portion or portions
39 of the real property held in undivided interest may be all of the real
40 property, except for the separate interests, or may include a



particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

~~(g)~~

(h) “Construction defect” means “construction defect” as defined in subdivision (c) of Section 17806 of the Business and Professions Code.

(i) “Declarant” means the person or group of persons designated in the declaration as declarant, or if no declarant is designated, the person or group of persons who sign the original declaration or who succeed to special rights, preferences, or privileges designated in the declaration as belonging to the signator of the original declaration.

~~(h)~~

(j) “Declaration” means the document, however denominated, which contains the information required by Section 1353.

~~(i)~~

(k) “Exclusive use common area” means a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.

(1) Unless the declaration otherwise provides, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, door frames, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(2) Notwithstanding the provisions of the declaration, internal and external telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

~~(j)~~

1 (l) “Governing documents” means the declaration and any
2 other documents, such as bylaws, operating rules of the
3 association, articles of incorporation, or articles of association, *or*
4 *a California Home Construction Warranty*, which govern the
5 operation of the common interest development or association.

6 ~~(k)~~

7 (m) “Planned development” means a development (other than
8 a community apartment project, a condominium project, or a stock
9 cooperative) having either or both of the following features:

10 (1) The common area is owned either by ~~an~~ the association or
11 in common by the owners of the separate interests who possess
12 appurtenant rights to the beneficial use and enjoyment of the
13 common area.

14 (2) A power exists in the association to enforce an obligation
15 of an owner of a separate interest with respect to the beneficial use
16 and enjoyment of the common area by means of an assessment
17 which may become a lien upon the separate interests in accordance
18 with Section 1367.

19 ~~(l)~~

20 (n) “Separate interest” has the following meanings:

21 (1) In a community apartment project, “separate interest”
22 means the exclusive right to occupy an apartment, as specified in
23 subdivision (d).

24 (2) In a condominium project, “separate interest” means an
25 individual unit, as specified in subdivision (f).

26 (3) In a planned development, “separate interest” means a
27 separately owned lot, parcel, area, or space.

28 (4) In a stock cooperative, “separate interest” means the
29 exclusive right to occupy a portion of the real property, as specified
30 in subdivision (m).

31 Unless the declaration or condominium plan, if any exists,
32 otherwise provides, if walls, floors, or ceilings are designated as
33 boundaries of a separate interest, the interior surfaces of the
34 perimeter walls, floors, ceilings, windows, doors, and outlets
35 located within the separate interest are part of the separate interest
36 and any other portions of the walls, floors, or ceilings are part of
37 the common areas.

38 The estate in a separate interest may be a fee, a life estate, an
39 estate for years, or any combination of the foregoing.

40 ~~(m)~~

(o) “Stock cooperative” means a development in which a corporation is formed or availed of primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The owners’ interest in the corporation, whether evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate development for purposes of subdivision (f) of Section 25100 of the Corporations Code.

A “stock cooperative” includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 33007.5 of the Health and Safety Code.

SEC. 12. Section 1354 of the Civil Code is amended to read:

1354. (a) The covenants and restrictions in the declaration, *including a California Home Construction Warranty, if applicable*, shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) ~~Unless~~ *Except where the terms and conditions of a California Home Construction Warranty are applicable, unless* the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not in excess of five thousand dollars (\$5,000), related to the enforcement of the governing documents, the parties shall endeavor, as provided in this subdivision, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties. Any party to ~~such~~ a dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution,

1 and (3) a notice that the party receiving the Request for Resolution
2 is required to respond thereto within 30 days of receipt or it will
3 be deemed rejected. Service of the Request for Resolution shall be
4 in the same manner as prescribed for service in a small claims
5 action as provided in Section 116.340 of the Code of Civil
6 Procedure. Parties receiving a Request for Resolution shall have
7 30 days following service of the Request for Resolution to accept
8 or reject alternative dispute resolution and, if not accepted within
9 the 30-day period by a party, shall be deemed rejected by that party.
10 If alternative dispute resolution is accepted by the party upon
11 whom the Request for Resolution is served, the alternative dispute
12 resolution shall be completed within 90 days of receipt of the
13 acceptance by the party initiating the Request for Resolution,
14 unless extended by written stipulation signed by both parties. The
15 costs of the alternative dispute resolution shall be borne by the
16 parties.

17 (c) At the time of filing a civil action by either an association
18 or an owner or a member of a common interest development solely
19 for declaratory relief or injunctive relief, or for declaratory relief
20 or injunctive relief in conjunction with a claim for monetary
21 damages not in excess of five thousand dollars (\$5,000), related to
22 the enforcement of the governing documents, the party filing the
23 action shall file with the complaint a certificate stating that
24 alternative dispute resolution has been completed in compliance
25 with subdivision (b). The failure to file a certificate as required by
26 subdivision (b) shall be grounds for a demurrer pursuant to Section
27 430.10 of the Code of Civil Procedure or a motion to strike
28 pursuant to Section 435 of the Code of Civil Procedure unless the
29 filing party certifies in writing that one of the other parties to the
30 dispute refused alternative dispute resolution prior to the filing of
31 the complaint, that preliminary or temporary injunctive relief is
32 necessary, or that alternative dispute resolution is not required by
33 subdivision (b), because the limitation period for bringing the
34 action would have run within the 120-day period next following
35 the filing of the action, or the court finds that dismissal of the action
36 for failure to comply with subdivision (b) would result in
37 substantial prejudice to one of the parties.

38 (d) Once a civil action specified in subdivision (a) to enforce
39 the governing documents has been filed by either an association or
40 an owner or member of a common interest development, upon



1 written stipulation of the parties the matter may be referred to
2 alternative dispute resolution and stayed. The costs of the
3 alternative dispute resolution shall be borne by the parties. During
4 this referral, the action shall not be subject to the rules
5 implementing subdivision (c) of Section 68603 of the Government
6 Code.

7 (e) The requirements of subdivisions (b) and (c) shall not apply
8 to the filing of a cross-complaint.

9 (f) In any action specified in subdivision (a) to enforce the
10 governing documents, the prevailing party shall be awarded
11 reasonable attorney's fees and costs. Upon motion by any party for
12 attorney's fees and costs to be awarded to the prevailing party in
13 these actions, the court, in determining the amount of the award,
14 may consider a party's refusal to participate in alternative dispute
15 resolution prior to the filing of the action.

16 (g) Unless consented to by both parties to alternative dispute
17 resolution that is initiated by a Request for Resolution under
18 subdivision (b), evidence of anything said or of admissions made
19 in the course of the alternative dispute resolution process shall not
20 be admissible in evidence, and testimony or disclosure of such a
21 statement or admission may not be compelled, in any civil action
22 in which, pursuant to law, testimony can be compelled to be given.

23 (h) Unless consented to by both parties to alternative dispute
24 resolution that is initiated by a Request for Resolution under
25 subdivision (b), documents prepared for the purpose or in the
26 course of, or pursuant to, the alternative dispute resolution shall
27 not be admissible in evidence, and disclosure of these documents
28 may not be compelled, in any civil action in which, pursuant to law,
29 testimony can be compelled to be given.

30 (i) Members of the association shall annually be provided a
31 summary of the provisions of this section, which specifically
32 references this section. The summary shall include the following
33 language:

34 "Failure by any member of the association to comply with the
35 prefiling requirements of Section 1354 of the Civil Code may
36 result in the loss of your rights to sue the association or another
37 member of the association regarding enforcement of the governing
38 documents."

1 The summary shall be provided either at the time the pro forma
2 budget required by Section 1365 is distributed or in the manner
3 specified in Section 5016 of the Corporations Code.

4 (j) Any Request for Resolution sent to the owner of a separate
5 interest pursuant to subdivision (b) shall include a copy of this
6 section.

7 SEC. 13. Section 1355.5 of the Civil Code is amended to read:

8 1355.5. (a) Notwithstanding any provision of the governing
9 documents of a common interest development to the contrary, the
10 board of directors of the association may, after the developer of the
11 common interest development has completed construction of the
12 development, has terminated construction activities, and has
13 terminated his or her marketing activities for the sale, lease, or
14 other disposition of separate interests within the development,
15 adopt an amendment deleting from any of the governing
16 documents any provision which is unequivocally designed and
17 intended, or which by its nature can only have been designed or
18 intended, to facilitate the developer in completing the construction
19 or marketing of the development. However, provisions of the
20 governing documents relative to a particular construction or
21 marketing phase of the development may not be deleted under the
22 authorization of this subdivision until that construction or
23 marketing phase has been completed.

24 (b) The provisions which may be deleted by action of the board
25 shall be limited to those which provide for access by the developer
26 over or across the common area for the purposes of (a) completion
27 of construction of the development, and (b) the erection,
28 construction, or maintenance of structures or other facilities
29 designed to facilitate the completion of construction or marketing
30 of separate interests.

31 (c) At least 30 days prior to taking action pursuant to
32 subdivision (a), the board of directors of the association shall mail
33 to all owners of the separate interests, by first-class mail, (1) a copy
34 of all amendments to the governing documents proposed to be
35 adopted under subdivision (a) and (2) a notice of the time, date, and
36 place the board of directors will consider adoption of the
37 amendments. The board of directors of an association may
38 consider adoption of amendments to the governing documents
39 pursuant to subdivision (a) only at a meeting which is open to all
40 owners of the separate interests in the common interest

development, who shall be given opportunity to make comments thereon. All deliberations of the board of directors on any action proposed under subdivision (a) shall only be conducted in ~~such~~ an open meeting.

(d) The board of directors of the association may not amend the governing documents pursuant to this section without the approval of the owners, casting a majority of the votes at a meeting or election of the association constituting a quorum and conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of, and Section 7613 of, the Corporations Code. For the purposes of this section, “quorum” means more than 50 percent of the owners who own no more than two separate interests in the development.

(e) *Nothing in this section shall be construed to affect the rights of a participating homebuilder under a California Home Construction Warranty that is applicable to the common interest development or the individual units contained therein.*

SEC. 14. Section 1356 of the Civil Code is amended to read:

1356. (a) If in order to amend a declaration, the declaration requires owners having more than 50 percent of the votes in the association, in a single class voting structure, or owners having more than 50 percent of the votes in more than one class in a voting structure with more than one class, to vote in favor of the amendment, the association, or any owner of a separate interest, may petition the superior court of the county in which the common interest development is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall describe the effort that has been made to solicit approval of the association members in the manner provided in the declaration, the number of affirmative and negative votes actually received, the number or percentage of affirmative votes required to effect the amendment in accordance with the existing declaration, and other matters the petitioner considers relevant to the court’s determination. The petition shall also contain, as exhibits thereto, copies of all of the following:

- (1) The governing documents.
- (2) A complete text of the amendment.
- (3) Copies of any notice and solicitation materials utilized in the solicitation of owner approvals.
- (4) A short explanation of the reason for the amendment.

1 (5) Any other documentation relevant to the court's
2 determination.

3 (b) Upon filing the petition, the court shall set the matter for
4 hearing and issue an ex parte order setting forth the manner in
5 which notice shall be given.

6 (c) The court may, but shall not be required to, grant the petition
7 if it finds all of the following:

8 (1) The petitioner has given not less than 15 days written notice
9 of the court hearing to all members of the association, to any
10 mortgagee of a mortgage or beneficiary of a deed of trust who is
11 entitled to notice under the terms of the declaration, and to the city,
12 county, or city and county in which the common interest
13 development is located that is entitled to notice under the terms of
14 the declaration.

15 (2) Balloting on the proposed amendment was conducted in
16 accordance with all applicable provisions of the governing
17 documents.

18 (3) A reasonably diligent effort was made to permit all eligible
19 members to vote on the proposed amendment.

20 (4) Owners having more than 50 percent of the votes, in a single
21 class voting structure, voted in favor of the amendment. In a voting
22 structure with more than one class, where the declaration requires
23 a majority of more than one class to vote in favor of the
24 amendment, owners having more than 50 percent of the votes of
25 each class required by the declaration to vote in favor of the
26 amendment voted in favor of the amendment.

27 (5) The amendment is reasonable.

28 (6) Granting the petition is not improper for any reason stated
29 in subdivision (e).

30 (d) If the court makes the findings required by subdivision (c),
31 any order issued pursuant to this section may confirm the
32 amendment as being validly approved on the basis of the
33 affirmative votes actually received during the balloting period or
34 the order may dispense with any requirement relating to quorums
35 or to the number or percentage of votes needed for approval of the
36 amendment that would otherwise exist under the governing
37 documents.

38 (e) Subdivisions (a) to (d), inclusive, notwithstanding, the
39 court shall not be empowered by this section to approve any
40 amendment to the declaration that:

1 (1) Would change provisions in the declaration requiring the
2 approval of owners having more than 50 percent of the votes in
3 more than one class to vote in favor of an amendment, unless
4 owners having more than 50 percent of the votes in each affected
5 class approved the amendment.

6 (2) Would eliminate any special rights, preferences, or
7 privileges designated in the declaration as belonging to the
8 declarant, without the consent of the declarant.

9 (3) Would impair the security interest of a mortgagee of a
10 mortgage or the beneficiary of a deed of trust without the approval
11 of the percentage of the mortgagees and beneficiaries specified in
12 the declaration, if the declaration requires the approval of a
13 specified percentage of the mortgagees and beneficiaries.

14 (4) *Would impair the rights, duties, and obligations of the*
15 *parties to a California Home Construction Warranty.*

16 (f) An amendment is not effective pursuant to this section until
17 the court order and amendment have been recorded in every
18 county in which a portion of the common interest development is
19 located. The amendment may be acknowledged by, and the court
20 order and amendment may be recorded by, any person designated
21 in the declaration or by the association for that purpose, or if no one
22 is designated for that purpose, by the president of the association.
23 Upon recordation of the amendment and court order, the
24 declaration, as amended in accordance with this section, shall have
25 the same force and effect as if the amendment were adopted in
26 compliance with every requirement imposed by the governing
27 documents.

28 (g) Within a reasonable time after the amendment is recorded
29 the association shall mail a copy of the amendment to each member
30 of the association, together with a statement that the amendment
31 has been recorded.

32 SEC. 15. Section 1357 of the Civil Code is amended to read:

33 1357. (a) The Legislature finds that there are common
34 interest developments that have been created with deed restrictions
35 which do not provide a means for the property owners to extend
36 the term of the declaration. The Legislature further finds that
37 covenants and restrictions, contained in the declaration, are an
38 appropriate method for protecting the common plan of
39 developments and to provide for a mechanism for financial
40 support for the upkeep of common areas including, but not limited

1 to, roofs, roads, heating systems, and recreational facilities. If
2 declarations terminate prematurely, common interest
3 developments may deteriorate and the housing supply of
4 affordable units could be impacted adversely.

5 The Legislature further finds and declares that it is in the public
6 interest to provide a vehicle for extending the term of the
7 declaration if owners having more than 50 percent of the votes in
8 the association choose to do so.

9 (b) A declaration which specifies a termination date, but which
10 contains no provision for extension of the termination date, may
11 be extended by the approval of owners having more than 50
12 percent of the votes in the association or any greater percentage
13 specified in the declaration for an amendment thereto. If the
14 approval of owners having more than 50 percent of the votes in the
15 association is required to amend the declaration, the term of the
16 declaration may be extended in accordance with Section 1356.

17 (c) Any amendment to a declaration made in accordance with
18 subdivision (b) shall become effective upon recordation in
19 accordance with Section 1355.

20 (d) No single extension of the terms of the declaration made
21 pursuant to this section shall exceed the initial term of the
22 declaration or 20 years, whichever is less. However, more than one
23 extension may occur pursuant to this section.

24 (e) *Nothing in this section shall be construed to allow for the*
25 *extension of the terms of a California Home Construction*
26 *Warranty.*

27 SEC. 16. Section 1364 of the Civil Code is amended to read:

28 1364. (a) Unless otherwise provided in the declaration of a
29 common interest development, *and subject to the terms and*
30 *conditions of a California Home Construction Warranty, if*
31 *applicable*, the association is responsible for repairing, replacing,
32 or maintaining the common areas, other than exclusive use
33 common areas, and the owner of each separate interest is
34 responsible for maintaining that separate interest and any
35 exclusive use common area appurtenant to the separate interest.

36 (b) (1) In a community apartment project, condominium
37 project, or stock cooperative, as defined in Section 1351, unless
38 otherwise provided in the declaration, the association is
39 responsible for the repair and maintenance of the common area



1 occasioned by the presence of wood-destroying pests or
2 organisms.

3 (2) In a planned development as defined in Section 1351,
4 unless a different maintenance scheme is provided in the
5 declaration, each owner of a separate interest is responsible for the
6 repair and maintenance of that separate interest as may be
7 occasioned by the presence of wood-destroying pests or
8 organisms. Upon approval of the majority of all members of the
9 association, the responsibility for ~~such~~ repair and maintenance
10 may be delegated to the association, which shall be entitled to
11 recover the cost thereof as a special assessment.

12 (c) The costs of temporary relocation during the repair and
13 maintenance of the areas within the responsibility of the
14 association shall be borne by the owner of the separate interest
15 affected.

16 (d) (1) The association may cause the temporary, summary
17 removal of any occupant of a common interest development for
18 ~~such~~ periods and at ~~such~~ times as may be necessary for prompt,
19 effective treatment of wood-destroying pests or organisms.

20 (2) The association shall give notice of the need to temporarily
21 vacate a separate interest to the occupants and to the owners, not
22 less than 15 days nor more than 30 days prior to the date of the
23 temporary relocation. The notice shall state the reason for the
24 temporary relocation, the date and time of the beginning of
25 treatment, the anticipated date and time of termination of
26 treatment, and that the occupants will be responsible for their own
27 accommodations during the temporary relocation.

28 (3) Notice by the association shall be deemed complete upon
29 either:

30 (A) Personal delivery of a copy of the notice to the occupants,
31 and sending a copy of the notice to the owners, if different than the
32 occupants, by first-class mail, postage prepaid at the most current
33 address shown on the books of the association.

34 (B) By sending a copy of the notice to the occupants at the
35 separate interest address and a copy of the notice to the owners, if
36 different than the occupants, by first-class mail, postage prepaid,
37 at the most current address shown on the books of the association.

38 (e) For purposes of this section, "occupant" means an owner,
39 resident, guest, invitee, tenant, lessee, sublessee, or other person
40 in possession on the separate interest.

(f) Notwithstanding the provisions of the declaration, the owner of a separate interest is entitled to reasonable access to the common areas for the purpose of maintaining the internal and external telephone wiring made part of the exclusive use common areas of a separate interest pursuant to paragraph (2) of subdivision (i) of Section 1351. The access shall be subject to the consent of the association, whose approval shall not be unreasonably withheld, and which may include the association's approval of telephone wiring upon the exterior of the common areas, and other conditions as the association determines reasonable.

SEC. 17. Section 1365 of the Civil Code is amended to read:

1365. Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all of its members the following documents:

(a) A pro forma operating budget, which shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in ~~bold~~ *boldface* type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). In lieu of complying with the requirements set forth in this clause, an association that

1 is obligated to issue a review of their financial statement pursuant
2 to subdivision (b) may include in the review a statement containing
3 all of the information required by this clause.

4 (C) The percentage that the amount determined for purposes of
5 clause (ii) subparagraph (B) equals *of* the amount determined for
6 purposes of clause (i) of subparagraph (B).

7 (3) A statement as to whether the board of directors of the
8 association has determined or anticipates that the levy of one or
9 more special assessments will be required to repair, replace, or
10 restore any major component or to provide adequate reserves
11 therefor.

12 (4) A general statement addressing the procedures used for the
13 calculation and establishment of those reserves to defray the future
14 repair, replacement, or additions to those major components that
15 the association is obligated to maintain.

16 The summary of the association's reserves disclosed pursuant to
17 paragraph (2) shall not be admissible in evidence to show improper
18 financial management of an association, provided that other
19 relevant and competent evidence of the financial condition of the
20 association is not made inadmissible by this provision.

21 A copy of the operating budget shall be annually distributed not
22 less than 45 days nor more than 60 days prior to the beginning of
23 the association's fiscal year.

24 (b) A review of the financial statement of the association shall
25 be prepared in accordance with generally accepted accounting
26 principles by a licensee of the California *State* Board of
27 Accountancy for any fiscal year in which the gross income to the
28 association exceeds seventy-five thousand dollars (\$75,000). A
29 copy of the review of the financial statement shall be distributed
30 within 120 days after the close of each fiscal year.

31 (c) In lieu of the distribution of the pro forma operating budget
32 required by subdivision (a), the board of directors may elect to
33 distribute a summary of the pro forma operating budget to all of
34 its members with a written notice that the pro forma operating
35 budget is available at the business office of the association or at
36 another suitable location within the boundaries of the
37 development, and that copies will be provided upon request and at
38 the expense of the association. If any member requests that a copy
39 of the pro forma operating budget required by subdivision (a) be
40 mailed to the member, the association shall provide the copy to the

1 member by first-class United States mail at the expense of the
2 association and delivered within five days. The written notice that
3 is distributed to each of the association members shall be in at least
4 10-point boldface type on the front page of the summary of the
5 budget.

6 (d) A statement describing the association's policies and
7 practices in enforcing lien rights or other legal remedies for default
8 in payment of its assessments against its members shall be
9 annually delivered to the members during the 60-day period
10 immediately preceding the beginning of the association's fiscal
11 year.

12 (e) (1) A summary of the association's property, general
13 liability, and earthquake and flood insurance policies, which shall
14 be distributed within 60 days preceding the beginning of the
15 association's fiscal year, that includes all of the following
16 information about each policy:

17 (A) The name of the insurer.

18 (B) The type of insurance.

19 (C) The policy limits of the insurance.

20 (D) The amount of deductibles, if any.

21 (2) The association shall, as soon as reasonably practicable,
22 notify its members by first-class mail if any of the policies
23 described in paragraph (1) have lapsed, been canceled, and are not
24 immediately renewed, restored, or replaced, or if there is a
25 significant change, such as a reduction in coverage or limits or an
26 increase in the deductible, as to any of those policies. If the
27 association receives any notice of nonrenewal of a policy
28 described in paragraph (1), the association shall immediately
29 notify its members if replacement coverage will not be in effect by
30 the date the existing coverage will lapse.

31 (3) To the extent that any of the information required to be
32 disclosed pursuant to paragraph (1) is specified in the insurance
33 policy declaration page, the association may meet its obligation to
34 disclose that information by making copies of that page and
35 distributing it to all of its members.

36 (4) The summary distributed pursuant to paragraph (1) shall
37 contain, in at least 10-point boldface type, the following statement:
38 "This summary of the association's policies of insurance provides
39 only certain information, as required by subdivision (e) of Section
40 1365 of the Civil Code, and should not be considered a substitute

1 for the complete policy terms and conditions contained in the
2 actual policies of insurance. Any association member may, upon
3 request and provision of reasonable notice, review the
4 association's insurance policies and, upon request and payment of
5 reasonable duplication charges, obtain copies of those policies.
6 Although the association maintains the policies of insurance
7 specified in this summary, the association's policies of insurance
8 may not cover your property, including personal property or, real
9 property improvements to or around your dwelling, or personal
10 injuries or other losses that occur within or around your dwelling.
11 Even if a loss is covered, you may nevertheless be responsible for
12 paying all or a portion of any deductible that applies. Association
13 members should consult with their individual insurance broker or
14 agent for appropriate additional coverage."

15 (f) *A summary of the terms and conditions of a California Home*
16 *Construction Warranty issued to the association, which shall*
17 *include the following information:*

18 (1) *The name, address, and telephone number of the*
19 *homebuilder and warranty administrator who is responsible for*
20 *the processing of claims.*

21 (2) *The process for the filing of a claim under the warranty.*

22 (3) *A summary of the alternative dispute resolution provisions*
23 *of the warranty, including the process for binding arbitration, if*
24 *applicable.*

25 (4) *A copy of the warranty issued to the association shall be*
26 *provided to an owner of a separate interest upon request.*

27 SEC. 18. Section 1365.7 of the Civil Code is amended to read:

28 1365.7. (a) A volunteer officer or volunteer director of an
29 association, as defined in subdivision (a) of Section 1351, which
30 manages a common interest development that is exclusively
31 residential, shall not be personally liable in excess of the coverage
32 of insurance specified in paragraph (4) to any person who suffers
33 injury, including, but not limited to, bodily injury, emotional
34 distress, wrongful death, or property damage or loss as a result of
35 the tortious act or omission of the volunteer officer or volunteer
36 director if all of the following criteria are met:

37 (1) The act or omission was performed within the scope of the
38 officer's or director's association duties.

39 (2) The act or omission was performed in good faith.

1 (3) The act or omission was not willful, wanton, or grossly
2 negligent.

3 (4) The association maintained and had in effect at the time the
4 act or omission occurred and at the time a claim is made one or
5 more policies of insurance which shall include coverage for (A)
6 general liability of the association and (B) individual liability of
7 officers and directors of the association for negligent acts or
8 omissions in that capacity; provided, that both types of coverage
9 are in the following minimum amount:

10 (A) At least five hundred thousand dollars (\$500,000) if the
11 common interest development consists of 100 or fewer separate
12 interests.

13 (B) At least one million dollars (\$1,000,000) if the common
14 interest development consists of more than 100 separate interests.

15 (b) The payment of actual expenses incurred by a director or
16 officer in the execution of the duties of that position does not affect
17 the director's or officer's status as a volunteer within the meaning
18 of this section.

19 (c) An officer or director who at the time of the act or omission
20 was a declarant, as defined in subdivision (g) of Section 1351, or
21 who received either direct or indirect compensation as an
22 employee from the declarant, or from a financial institution that
23 purchased a separate interest, as defined in subdivision (l) of
24 Section 1351, at a judicial or nonjudicial foreclosure of a mortgage
25 or deed of trust on real property, is not a volunteer for the purposes
26 of this section.

27 (d) Nothing in this section shall be construed to limit the
28 liability of the association for its negligent act or omission or for
29 any negligent act or omission of an officer or director of the
30 association.

31 (e) This section shall only apply to a volunteer officer or
32 director who is a tenant of a separate interest in the common
33 interest development or is an owner of no more than two separate
34 interests in the common interest development.

35 (f) (1) For purposes of paragraph (1) of subdivision (a), the
36 scope of the officer's or director's association duties shall include,
37 but shall not be limited to, both of the following decisions:

38 (A) Whether to conduct an investigation of the common
39 interest development for latent deficiencies prior to the expiration



1 of the applicable statute of limitations *or within the term of a*
 2 *California Home Construction Warranty, if applicable.*

3 (B) Whether to commence a civil action against the builder for
 4 defects in design or construction.

5 (2) It is the intent of the Legislature that this section clarify the
 6 scope of association duties to which the protections against
 7 personal liability in this section apply. It is not the intent of the
 8 Legislature that these clarifications be construed to expand, or
 9 limit, the fiduciary duties owed by the directors or officers.

10 SEC. 19. Section 1368 of the Civil Code is amended to read:

11 1368. (a) The owner of a separate interest, other than an
 12 owner subject to the requirements of Section 11018.6 of the
 13 Business and Professions Code, shall, as soon as practicable before
 14 transfer of title to the separate interest or execution of a real
 15 property sales contract therefor, as defined in Section 2985,
 16 provide the following to the prospective purchaser:

17 (1) A copy of the governing documents of the common interest
 18 development, *including a copy of the California Home*
 19 *Construction Warranty that may be applicable to the association*
 20 *or owner of the separate interest.*

21 (2) If there is a restriction in the governing documents limiting
 22 the occupancy, residency, or use of a separate interest on the basis
 23 of age in a manner different from that provided in Section 51.3, a
 24 statement that the restriction is only enforceable to the extent
 25 permitted by Section 51.3 and a statement specifying the
 26 applicable provisions of Section 51.3.

27 (3) A copy of the most recent documents distributed pursuant
 28 to Section 1365.

29 (4) A true statement in writing obtained from an authorized
 30 representative of the association as to the amount of the
 31 association's current regular and special assessments and fees, any
 32 assessments levied upon the owner's interest in the common
 33 interest development that are unpaid on the date of the statement,
 34 and any monetary fines or penalties levied upon the owner's
 35 interest and unpaid on the date of the statement. The statement
 36 obtained from an authorized representative shall also include true
 37 information on late charges, interest, and costs of collection which,
 38 as of the date of the statement, are or may be made a lien upon the
 39 owner's interest in a common interest development pursuant to
 40 Section 1367.

(5) A copy or a summary of any notice previously sent to the owner pursuant to subdivision (h) of Section 1363 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(6) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph shall not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(7) A copy of the latest information provided for in Section 1375.1.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).

(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five

1 hundred dollars (\$500). In an action to enforce this liability, the
2 prevailing party shall be awarded reasonable attorneys' fees.

3 (e) Nothing in this section affects the validity of title to real
4 property transferred in violation of this section.

5 (f) In addition to the requirements of this section, an owner
6 transferring title to a separate interest shall comply with applicable
7 requirements of Sections 1133 and 1134.

8 SEC. 20. Section 1368.4 of the Civil Code is amended to read:

9 1368.4. (a) Not later than 30 days prior to the filing of any
10 civil action by the association against the declarant or other
11 developer of a common interest development, *or the initiation of*
12 *the alternative dispute process under a California Home*
13 *Construction Warranty, if applicable*, for alleged damage to the
14 common areas, alleged damage to the separate interests that the
15 association is obligated to maintain or repair, or alleged damage to
16 the separate interests that arises out of, or is integrally related to,
17 damage to the common areas or separate interests that the
18 association is obligated to maintain or repair, the board of directors
19 of the association shall provide written notice to each member of
20 the association who appears on the records of the association when
21 the notice is provided. This notice shall specify all of the
22 following:

23 (1) That a meeting will take place to discuss problems that may
24 lead to the filing of a civil action.

25 (2) The options, including civil actions, that are available to
26 address the problems.

27 (3) The time and place of this meeting.

28 (b) Notwithstanding subdivision (a), if the association has
29 reason to believe that the applicable statute of limitations will
30 expire before the association files the civil action, the association
31 may give the notice, as described above, within 30 days after the
32 filing of the action.

33 SEC. 21. Section 1375 of the Civil Code is amended to read:

34 1375. (a) *This section, and the procedures and requirements*
35 *established herein, shall not be applicable where the association*
36 *has contracted for a California Home Construction Warranty that*
37 *provides for both an alternative process for the filing of*
38 *complaints, inquiries, and claims, and an alternative process for*
39 *the resolution of disputes, including binding arbitration.*

1 (b) Before an association commences an action for damages
2 against a builder of a common interest development based upon a
3 claim for defects in the design or construction of the common
4 interest development, all of the requirements of subdivisions ~~(b)~~
5 ~~to (g)~~ (c) to (h), inclusive, shall be met, except as otherwise
6 provided in this section.

7 ~~(b)~~

8 (c) (1) The association shall give written notice to the builder
9 against whom the claim is made. This notice shall include all of the
10 following:

11 (A) A preliminary list of defects.

12 (B) A summary of the results of a survey or questionnaire
13 distributed to homeowners to determine the nature and extent of
14 defects, if this survey has been conducted or a questionnaire has
15 been distributed.

16 (C) Either a summary of the results of testing conducted to
17 determine the nature and extent of defects or the actual test results,
18 if this testing has been conducted.

19 (2) The association's notice shall, upon delivery of the notice
20 to the builder, commence a period of time not to exceed 90 days,
21 unless the association and builder agree to a longer period, during
22 which the association and builder shall either, in accordance with
23 the requirements of this section, attempt to settle the dispute or
24 attempt to agree to submit it to alternative dispute resolution.

25 (3) (A) Except as provided in this section and notwithstanding
26 any other provision of law, the notice by the association shall, upon
27 mailing, toll all statutory and contractual limitations on actions
28 against all parties who may be responsible for the defects claimed,
29 whether named in the notice or not, including claims for indemnity
30 applicable to the claim, for a period of 150 days or a longer period
31 agreed to in writing by the association and the builder.

32 (B) At any time, the builder may give written notice to cancel
33 the tolling of the statute of limitations provided in this section.
34 Upon delivery of this written cancellation notice, the association
35 shall be relieved of any further obligation to satisfy the
36 requirements of this subdivision and subdivisions ~~(e)~~ (d) to ~~(e)~~ (f),
37 inclusive. The tolling of all applicable statutes of limitations shall
38 cease 60 days after the written notice of cancellation by the builder
39 is delivered to the association.

40 ~~(e)~~

1 (d) (1) Within 25 days of the date the association delivers the
2 notice required by subdivision ~~(b)~~ (c), the builder may request in
3 writing to meet and confer with the board of directors of the
4 association, and to inspect the project and conduct testing,
5 including testing that may cause physical damage to any property
6 in the development, in order to evaluate the claim. If the builder
7 does not make a timely request to meet and confer with the board
8 of directors of the association, or to conduct inspection and testing,
9 the association shall be relieved of any further obligation to satisfy
10 the requirements of this subdivision and subdivisions ~~(d)~~ (e) and
11 ~~(e)~~ (f). Unless the builder and association otherwise agree, the
12 meeting shall take place no later than 10 days from the date of the
13 builder's written request, at a mutually agreeable time and place.
14 The meeting shall be subject to subdivision (g) of Section 1363.
15 The discussions at the meeting are privileged communications and
16 are not admissible in evidence in any civil action, unless the
17 association and builder consent to their admission. The meeting
18 shall be for the purpose of discussing all of the following:
19 (A) The nature and extent of the claimed defects.
20 (B) Proposed methods of correction, to the extent there is
21 sufficient information.
22 (C) Proposals for submitting the dispute to alternative dispute
23 resolution.
24 (D) Requests from the builder to inspect the project and
25 conduct testing.
26 (2) If the builder requests in writing to meet and confer with the
27 board of directors of the association pursuant to paragraph (1) of
28 this subdivision, the builder shall deliver the notice provided by
29 the association to the builder pursuant to subdivision ~~(b)~~ (c) to any
30 insurer that has issued a policy to the builder which imposes upon
31 the insurer a duty to defend the insured or indemnify the insured
32 for losses resulting from the defects identified in the notice
33 required by subdivision ~~(b)~~ (c). The notice by the builder shall,
34 upon receipt, impose upon that insurer any obligation which would
35 be imposed under the terms of the policy if the insured had been
36 served with a summons and complaint for damages. The builder
37 shall inform the association when the builder delivers the notice to
38 each insurer pursuant to this paragraph.
39 ~~(d)~~

(e) (1) If the association conducted inspection and testing prior to the date it sent the written notice pursuant to subdivision ~~(b)~~ (c), the association shall, at the earliest practicable date after the meeting held pursuant to subdivision ~~(e)~~ (d), make available for inspection and testing at least those areas inspected or tested by the association. The inspection and testing shall be completed within 15 days from the date the association makes these areas available for inspection and testing, unless the association and builder agree to a longer period. If the builder does not timely complete the inspection and testing, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision and subdivision ~~(e)~~ (f). The manner in which the inspection and testing shall be conducted, and the extent of any inspection and testing to be conducted beyond that which was conducted by the association prior to sending the notice, shall be set by agreement of the association and builder.

(2) The builder shall pay all costs of inspection and testing that is requested by the builder, shall restore the property to the condition which existed immediately prior to the testing, and shall indemnify the association and owner of the separate interest for any damages resulting from the testing.

(3) Interior inspections of occupied separate interests and destructive testing of any interior of a separate interest shall be conducted in accordance with the governing documents of the association, unless otherwise agreed to by the owner of the separate interest. If the governing documents of the association do not provide for inspection or testing of separate interests, this inspection or testing shall be conducted in a manner and at a time agreed to by the owner of the separate interest.

(4) The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this section.

~~(e)~~

(f) (1) Within 30 days of the completion of inspection and testing or within 30 days of a meeting held pursuant to subdivision ~~(e)~~ (d) if no inspection and testing is conducted pursuant to subdivision ~~(d)~~ (e), the builder shall submit to the association all of the following:

(A) A request to meet with the board to discuss a written settlement offer.

1 (B) A written settlement offer, and a concise explanation of the
2 specific reasons for the terms of the offer. This offer may include
3 an offer to submit the dispute to alternative dispute resolution.

4 (C) A statement that the builder has access to sufficient funds
5 to satisfy the conditions of the settlement offer.

6 (D) A summary of the results of testing conducted for the
7 purpose of determining the nature and extent of defects, if this
8 testing has been conducted, unless the association provided the
9 builder with actual test results pursuant to subdivision ~~(b)~~ (c), in
10 which case the builder shall provide the association with actual test
11 results.

12 (2) If the builder does not timely submit the items required by
13 this subdivision, the association shall be relieved of any further
14 obligation to satisfy the requirements of this subdivision only.

15 (3) No less than 10 days after the builder submits the items
16 required by this paragraph, the builder and the board of directors
17 of the association shall meet and confer about the builder's
18 settlement offer, including any offer to submit the dispute to
19 alternative dispute resolution.

20 ~~(f)~~

21 (g) (1) At any time after the notice required by subdivision ~~(b)~~
22 (c) is delivered to the builder, the association and builder may
23 agree in writing to modify or excuse any of the time periods or
24 other obligations imposed by this section.

25 (2) Except for the notice required pursuant to subdivision ~~(g)~~
26 (h), all notices, requests, statements, or other communications
27 required pursuant to this section shall be delivered by one of the
28 following:

29 (A) By first-class registered or certified mail, return receipt
30 requested.

31 (B) In any manner in which it is permissible to serve a
32 summons pursuant to Section 415.10 or 415.20 of the Code of
33 Civil Procedure.

34 ~~(g)~~

35 (h) If the board of directors of the association rejects a
36 settlement offer presented at the meeting held pursuant to
37 subdivision ~~(e)~~ (f), the board shall comply with the requirements
38 of paragraph (1) of this subdivision. If the association is relieved
39 of its obligation to satisfy the requirements of subdivisions ~~(a)~~ (b)
40 to ~~(e)~~ (f), inclusive, before all those requirements are satisfied, the

1 association shall comply with the requirements of paragraph (2) of
2 this subdivision. Under no circumstances shall the association be
3 required to comply with both paragraph (1) and paragraph (2) of
4 this subdivision.

5 (1) (A) If the association's board of directors rejects a
6 settlement offer presented at the meeting held pursuant to
7 subdivision ~~(e)~~ (f), the board shall hold a meeting open to each
8 member of the association. The meeting shall be held no less than
9 15 days before the association commences an action for damages
10 against the builder.

11 (B) No less than 15 days before this meeting is held, a written
12 notice shall be sent to each member of the association specifying
13 all of the following:

14 (i) That a meeting will take place to discuss problems that may
15 lead to the filing of a civil action, and the time and place of this
16 meeting.

17 (ii) The options that are available to address the problems,
18 including the filing of a civil action and a statement of the various
19 alternatives that are reasonably foreseeable by the association to
20 pay for those options and whether these payments are expected to
21 be made from the use of reserve account funds or the imposition
22 of regular or special assessments, or emergency assessment
23 increases.

24 (iii) The complete text of any written settlement offer, and a
25 concise explanation of the specific reasons for the terms of the
26 offer submitted to the board pursuant to paragraph (1) of
27 subdivision ~~(e)~~ (f), received from the builder and of any offer by
28 the builder to submit the dispute to alternative dispute resolution.

29 (iv) The preliminary list of defects provided by the association
30 to the builder pursuant to subdivision ~~(b)~~ (c) and a list of any other
31 documents provided by the association to the builder pursuant to
32 subdivision ~~(b)~~ (c), and information about where and when
33 members of the association may inspect those documents.

34 (C) The builder shall pay all expenses attributable to sending
35 the settlement offer and any offer for alternative dispute resolution
36 to all members of the association. The builder shall also pay the
37 expense of holding the meeting, not to exceed three dollars (\$3)
38 per association member.

39 (D) The discussions at the meeting and the contents of the
40 notice and the items required to be specified in the notice pursuant

1 to subparagraph (B), are privileged communications and are not
2 admissible in evidence in any civil action, unless the association
3 consents to their admission.

4 (E) Compliance with this paragraph shall excuse the
5 association from satisfying the requirements of Section 1368.4.

6 (2) If the association is relieved of its obligation to satisfy the
7 requirements of subdivisions ~~(a)~~ (b) to ~~(e)~~ (f), inclusive, before all
8 those requirements have been satisfied, the association may
9 commence an action for damages against the builder 30 days after
10 sending a written notice to each member specifying all of the
11 following:

12 (A) The preliminary list of defects provided by the association
13 to the builder pursuant to subdivision ~~(b)~~ (c), and a list of any other
14 documents provided by the association to the builder pursuant to
15 subdivision ~~(b)~~ (c), and information about where and when
16 members of the association may inspect those documents.

17 (B) The options, including civil actions, that are available to
18 address the problems.

19 (C) A statement that if 5 percent of the members of the
20 association request a special meeting of the members to discuss the
21 matter within 15 days of the date the notice is mailed or delivered
22 to the members of the association, a meeting of the members shall
23 be held, unless governing documents of the association provide for
24 a different procedure for calling a special meeting of the members,
25 in which case, the statement shall inform the members of that
26 procedure.

27 (D) Compliance with this paragraph shall excuse the
28 association from satisfying the requirements of Section 1368.4.

29 ~~(h)~~

30 (i) (1) The only method of seeking judicial relief for the failure
31 of the association to comply with this section shall be the assertion,
32 as provided for in this subdivision, of a procedural deficiency to
33 an action for damages by the association against the builder after
34 such an action has been filed. A verified application asserting such
35 a procedural deficiency shall be filed with the court no later than
36 90 days after the answer to the plaintiff's complaint has been
37 served, unless the court finds that extraordinary conditions exist.

38 (2) Upon the verified application of the association or the
39 builder alleging substantial noncompliance with this section, the
40 court shall schedule a hearing within 21 days of the application to

1 determine whether the association or builder has substantially
2 complied with this section. The issue may be determined upon
3 affidavits or upon oral testimony, in the discretion of the court.

4 (3) (A) If the court finds that the association did not
5 substantially comply with this section, the court shall stay the
6 action for up to 90 days to allow the association to establish
7 substantial compliance. The court shall set a hearing within 90
8 days to determine substantial compliance by the association. At
9 any time, the court may, for good cause shown, extend the period
10 of the stay upon application of the association.

11 (B) If, within the time set by the court pursuant to this section,
12 the association has not established that it has substantially
13 complied with this section, the court shall determine if, in the
14 interest of justice, the action should be dismissed without
15 prejudice, or if another remedy should be fashioned. Under no
16 circumstances shall the court dismiss the action with prejudice as
17 a result of the association's failure to substantially comply with
18 this section. In determining the appropriate remedy, the court shall
19 consider the extent to which the builder has complied with this
20 section.

21 (C) If the alleged noncompliance of either the builder or the
22 association resulted from the unreasonable withholding of consent
23 for inspection or testing by an owner of a separate interest, it shall
24 not be considered substantial noncompliance, provided that the
25 party alleged to be out of compliance did not encourage the
26 withholding of consent.

27 (4) If the court finds that the builder did not pay all of the costs
28 of inspection and testing pursuant to paragraph (3) of subdivision
29 ~~(a)~~ (b), or that the builder did not pay its required share of the costs
30 of holding the meeting and of all expenses attributable to sending
31 the settlement offer pursuant to subparagraph (C) of paragraph (1)
32 of subdivision ~~(g)~~ (h) of this section, the court shall order the
33 builder to pay any deficiencies within 30 days, with interest, and
34 any additional remedy which the court determines, in the interest
35 of justice, should be fashioned.

36 ~~(i)~~

37 (j) As used in this section:

38 (1) "Association" shall have the same meaning as defined in
39 subdivision (a) of Section 1351.



(2) “Builder” means the declarant, as defined in subdivision (g) of Section 1351.

~~(D)~~

(3) “Common interest development” shall have the same meaning as in subdivision (c) of Section 1351, except that it shall not include developments or projects with less than 20 units.

SEC. 22. Section 1375.1 of the Civil Code is amended to read:

1375.1. (a) As soon as is reasonably practicable after the association and the builder have entered into a settlement agreement or the matter has otherwise been resolved, *including the resolution of alleged defects pursuant to the terms and conditions of a California Home Construction Warranty, if applicable*, regarding alleged defects in the common areas, alleged defects in the separate interests that the association is obligated to maintain or repair, or alleged defects in the separate interests that arise out of, or are integrally related to, defects in the common areas or separate interests that the association is obligated to maintain or repair, where the defects giving rise to the dispute have not been corrected, the association shall, in writing, inform only the members of the association whose names appear on the records of the association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

(1) A general description of the defects that the association reasonably believes, as of the date of the disclosure, will be corrected or replaced.

(2) A good faith estimate, as of the date of the disclosure, of when the association believes that the defects identified in paragraph (1) will be corrected or replaced. The association may state that the estimate may be modified.

(3) The status of the claims for defects in the design or construction of the common interest development that were not identified in paragraph (1) whether expressed in a preliminary list of defects sent to each member of the association or otherwise claimed and disclosed to the members of the association.

(b) Nothing in this section shall preclude an association from amending the disclosures required pursuant to subdivision (a), and any amendments shall supersede any prior conflicting information disclosed to the members of the association and shall retain any privilege attached to the original disclosures.

(c) Disclosure of the information required pursuant to subdivision (a) or authorized by subdivision (b) shall not waive any privilege attached to the information.

(d) For the purposes of the disclosures required pursuant to this section, the term “defects” shall be defined to include any damage resulting from defects.

SEC. 23. Section 1298 of the Code of Civil Procedure is amended to read:

1298. (a) Whenever any contract to convey real property, or contemplated to convey real property in the future, including marketing contracts, deposit receipts, real property sales contracts as defined in Section 2985 of the Civil Code, leases together with options to purchase, or ground leases coupled with improvements, but not including powers of sale contained in deeds of trust or mortgages, contains a provision for binding arbitration of any dispute between the principals in the transaction, *including disputes arising under a California Homebuyer Warranty issued pursuant to Chapter 4 (commencing with Section 17800) of Part 3 of Division 7 of the Business and Professions Code that may apply to the real property in question*, the contract shall have that provision clearly titled “ARBITRATION OF DISPUTES.”

If a provision for binding arbitration is included in a printed contract, it shall be set out in at least 8-point ~~bold~~ *boldface* type or in contrasting red in at least 8-point type, and if the provision is included in a typed contract, it shall be set out in capital letters.

(b) Whenever any contract or agreement between principals and agents in real property sales transactions, including listing agreements, as defined in Section 1086 of the Civil Code, contains a provision requiring binding arbitration of any dispute between the principals and agents in the transaction, the contract or agreement shall have that provision clearly titled “ARBITRATION OF DISPUTES.”

If a provision for binding arbitration is included in a printed contract, it shall be set out in at least 8-point ~~bold~~ *boldface* type or in contrasting red in at least 8-point type, and if the provision is included in a typed contract, it shall be set out in capital letters.

(c) Immediately before the line or space provided for the parties to indicate their assent or nonassent to the arbitration provision described in subdivision (a) or (b), and immediately following that arbitration provision, the following shall appear:

1
2 “NOTICE: BY ~~INITIALLY~~ *INITIALING* IN THE SPACE
3 BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE
4 ARISING OUT OF THE MATTERS INCLUDED IN THE
5 ‘ARBITRATION OF DISPUTES’ PROVISION DECIDED BY
6 NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA
7 LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT
8 POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT
9 OR JURY TRIAL. BY ~~INITIALLY~~ *INITIALING* IN THE
10 SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL
11 RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE
12 RIGHTS ARE SPECIFICALLY INCLUDED IN THE
13 ‘ARBITRATION OF DISPUTES’ PROVISION. IF YOU
14 REFUSE TO SUBMIT TO ARBITRATION AFTER
15 AGREEING TO THIS PROVISION, YOU MAY BE
16 COMPELLED TO ARBITRATE UNDER THE AUTHORITY
17 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.
18 YOUR AGREEMENT TO THIS ARBITRATION PROVISION
19 IS VOLUNTARY.”

20 “WE HAVE READ AND UNDERSTAND THE
21 FOREGOING AND AGREE TO SUBMIT DISPUTES
22 ARISING OUT OF THE MATTERS INCLUDED IN THE
23 ‘ARBITRATION OF DISPUTES’ PROVISION TO NEUTRAL
24 ARBITRATION.”

25
26 If the above provision is included in a printed contract, it shall
27 be set out either in at least 10-point ~~bold~~ *boldface* type or in
28 contrasting red print in at least 8-point ~~bold~~ *boldface* type, and if
29 the provision is included in a typed contract, it shall be set out in
30 capital letters.

31 (d) Nothing in this section shall be construed to diminish the
32 authority of any court of competent jurisdiction with respect to real
33 property transactions in areas involving court supervision or
34 jurisdiction, including, but not limited to, probate, marital
35 dissolution, foreclosure of liens, unlawful detainer, or eminent
36 domain.

37 (e) In the event an arbitration provision is contained in an
38 escrow instruction, it shall not preclude the right of an
39 escrowholder to institute an interpleader action.

1 SEC. 24. Section 1298.7 of the Code of Civil Procedure is
2 amended to read:

3 1298.7. In the event an arbitration provision is included in a
4 contract or agreement covered by this title, it shall not preclude or
5 limit any right of action for bodily injury or wrongful death, ~~or any~~
6 ~~right of action to which Section 337.1 or 337.15 is applicable.~~

7 SEC. 25. Section 120 of the Insurance Code is amended to
8 read:

9 120. Miscellaneous insurance includes insurance against loss
10 from damage done, directly or indirectly by lightning, windstorm,
11 tornado, earthquake or insurance under an open policy
12 indemnifying the producer of any motion picture, television,
13 theatrical, sport, or similar production, event, or exhibition against
14 loss by reason of the interruption, postponement, or cancellation
15 of ~~such~~ *that* production, event, or exhibition due to death,
16 accidental injury, or sickness preventing performers, directors, or
17 other principals from commencing or continuing their respective
18 performance or duties; and any insurance not included in any of the
19 foregoing classes, and which is a proper subject of insurance.
20 *Miscellaneous insurance also includes insurance indemnifying a*
21 *participating homebuilder, as defined in Section 17808 of the*
22 *Business and Professions Code, for losses incurred under a*
23 *California Homebuyer Warranty issued pursuant to Chapter 4*
24 *(commencing with Section 17800) of Part 3 of Division 7 of the*
25 *Business and Professions Code.*

